

Recording Requested By And
When Recorded Return To:

Fox Bay Condominiums Homeowners Association, Inc.
1132 South 500 West
Salt Lake City, Utah 84101
Attention: Mark B. Cohen

Ent 251127 Bk 0509 Pg 0698-0765
ELIZABETH M PALMIER, Recorder
WASATCH COUNTY CORPORATION
2002 NOV 25 4:32pm Fee 273.00 MMM
FOR FOX BAY HOMEOWNERS ASSOC

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FOX BAY CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOX BAY CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., is executed as of November 1, 2002, by Fox Bay Condominiums, L.C., Declarant, as owner of the Property described herein.

RECITALS

A. This Amended and Restated Declaration hereby entirely amends, restates, supersedes, and terminates that certain Declaration of Covenants, Conditions and Restrictions of Fox Bay Condominiums Homeowners Association, Inc. recorded in the Official Records of Wasatch County on July 16, 2001, in Book 0512, at Page 0473-0529, as Entry No. 235063.

B. Capitalized terms in this Declaration are defined in Article I.

C. Declarant holds legal title to a certain tract of real property located in Wasatch County, State of Utah, and more particularly described in Article II of this Declaration. It is intended that the various Units described in this Declaration will be conveyed to Owners in fee simple.

D. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the Interests therein conveyed and to establish thereon a condominium development in accordance with the terms hereof.

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding upon and be for the benefit of Declarant, its successors and assigns and all owners of all or any part of the Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I.
DEFINITIONS

When used in this Declaration (including that portion hereof headed "Recitals") the following terms shall have the meanings indicated below. To the extent that those terms are also defined in the Act, the definitions in the Act shall be incorporated herein.

1.1. **"Act"** shall mean the Condominium Ownership Act of the State of Utah set forth at Utah Code Ann. Sections 57-8-1 et. seq., as amended from time to time.

1.2. **"Applicable Laws"** shall mean all laws, regulations, codes, ordinances, rules, permits, orders, agreements, and other regulations, along with any amendments thereto, applicable to the matter in question and promulgated by any City, County, State, Federal or other governmental agency having jurisdiction and authority over the matter in question.

1.3. **"Architectural Committee"** shall mean the committee created pursuant to the Article of this Declaration entitled "Architectural Committee."

1.4. **"Articles" or "Articles of Incorporation"** shall mean the Articles of Incorporation of the Association, filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, and all modifications and amendments thereto.

1.5. **"Association"** shall mean the FOX BAY CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation.

1.6. **"Board or Board of Trustees"** shall mean the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation, and Bylaws of the Association.

1.7. **"Bylaws"** shall mean the Bylaws of the Association attached to this Declaration and recorded in the official records of the County concurrently with this Declaration and all modifications and amendments thereto.

1.8. **"Common Areas"** shall mean that part of the Project which is not included within the Units, including all roadways, walkways and utility lines within the Project and all improvements other than utility lines not owned by the Association now or hereafter constructed or located thereon together with easements and rights-of-way appurtenant thereto. The Common Areas are further shown on the Plat.

1.9. **"Common Expense Fund"** shall mean the fund created or to be created pursuant to the provisions of Article V of the Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operational expenses and one for capital expenses which together shall constitute the Common Expense Fund.

1.10. **"Common Expenses"** shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

1.11 **“Condominium Building”** shall mean and refer to a structure containing two or more Units, constituting a portion of the Project.

1.12 **“Condominium Owner’s Estate”** The condominium Unit estate shall consist of all the components of ownership held by the Owner of an individual Unit in the Project including a defined space in a Condominium Building (i.e. the Unit), an undivided interest in the Common Areas; and the right to use any Limited Common Areas and any other easements.

1.13 **“County”** shall mean Wasatch County in the State of Utah.

1.14 **“Declarant”** shall mean and refer to Fox Bay Condominiums, L.C., and/or any successor thereof, which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project (or a portion thereof) as did its predecessor.

1.15 **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of the FOX BAY CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., as the same may be hereafter modified, amended and supplemented.

1.16 **“Eligible Mortgagee”** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XII of the Declaration.

1.17 **“FNMA”** shall mean and refer to the Federal National Mortgage Association.

1.18 **“First Mortgage”** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.19 **“First Mortgagee”** shall mean any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.20 **“Governing Documents”** shall mean the Senior Encumbrances, this Declaration, the Articles, the Bylaws, the rules and regulations promulgated by the Board, the Association and the Architectural Committee from time to time and any other documents governing all or any portion of the Project that are approved by the Association from time to time and all supplements and amendments to the foregoing documents.

1.21 **“Improvement”** shall mean any structure or appurtenance thereto of every type and kind, including but not limited to buildings, walkways, gutters, curbs, pipes, sprinkler pipes, conduit, garages, room additions, patio covers, spas, recreational facilities, roads, driveways, parking areas, fences, walls, screening walls, retaining walls, stairs, decks, patios, porches, balconies, chimneys, antennas, edges, windbreaks, poles, signs, exterior air conditioning and water softening fixtures or equipment, plantings, planted trees, shrubs, flowers, plants and other vegetation, landscaping of every kind, nature, or description, whether temporary or permanent, excepting personal property or equipment within, or usually within, a structure.

1.22 **“Limited Common Areas”** shall mean any Common Area designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project. Any

parking areas and storage facilities which are identified on the Plat as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat permanently designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant.

1.23 **“Manager”** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

1.24 **“Member”** shall mean and refer to every person or entity who holds membership in the Association.

1.25 **“Mortgage”** shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.26 **“Mortgagee”** shall mean a beneficiary of a Mortgage as named Mortgagee.

1.27 **“Mortgage Holder”** The term "Mortgage Holder" shall mean the holder of the beneficial interest in any Mortgage.

1.28 **“Owner”** shall mean the person or entity, including Declarant, owning in fee simple a Unit in the Project, as such ownership is shown on the official records of the County.

The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record.)

1.29 **“Percentage Interest”** shall mean the undivided percentage interest of each Owner in the Common Areas of the Project. The Percentage Interest appurtenant to a Unit shall be equal to the ratio between that Unit and the aggregate number of all Units in the Project, regardless of the size of the Unit in question. The Percentage Interest of each Unit is set forth on Exhibit “B” attached hereto and incorporated herein. The sum total of all Percentage Interests shall equal 100 percent.

1.30 **“Plat”** shall mean the Record of Survey Plat Map for Fox Bay Condominiums, a Condominium Development, recorded in the official records of the County, and all amendments thereto.

1.31 **“Project”** shall mean the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

1.32 **“Project Documents”** shall mean this Declaration, the Articles, the Bylaws, any Rules and Regulations enacted for the Project, the Senior Encumbrances, and any other documents governing all or any portion of the Project.

1.33 **“Property”** shall mean the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.

1.34 **"Related Parties"** shall mean all the present and future owners, directors, trustees, officers, employees, affiliates, agents, heirs, successors and assigns associated with the person or entity in question.

1.35 **"Senior Encumbrances"** shall include, but not be limited to:

- (a) Affordable Housing Agreement, dated as of June 1, 2001, among Wasatch County; The Wasatch County Housing Authority, a Utah non-profit corporation; Blue Ledge Corporation, a Delaware corporation; and Fox Bay Condominiums, L.C., a Utah limited liability company, and recorded in the Official Records of Wasatch County on July 16, 2001, as Entry No. 235060 at Book 512 and Page 0371-0389, including any amendments thereto at any time.
- (b) Easement and Maintenance Agreement dated as of July 16, 2001, by Blue Ledge Corporation, a Delaware corporation; Fox Bay Condominiums, L.C., a Utah limited liability company; Star Harbour Estates Homeowners Association, Inc., a Utah nonprofit corporation; and Fox Bay Condominiums Homeowners Association, Inc., a Utah nonprofit corporation, and recorded in the Official Records of Wasatch County on July 16, 2001, as Entry No. 235064, at Book 512, and Page 530, including any amendments thereto at any time.

1.36 **"State"** shall mean the State of Utah in the United States of America.

1.37 **"Unit"** shall mean and refer to any of the separately numbered and individually described units having been constructed and having received a Certificate of Occupancy issued by the County or hereafter shown on the Plat which is designed and intended for use and occupancy as a single family residence.

ARTICLE II. GENERAL

2.1 **Property.** The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in the County and State and further described on Exhibit "A" attached hereto.

2.2 **Mortgage.** The Project is subject to the Mortgages, Senior Encumbrances, and any other construction loans described on title reports pertaining to the Project.

2.3 **Covenants.** The covenants, conditions and restrictions set forth in this Declaration are imposed upon the Owners and Project. Such covenants, conditions and restrictions shall be a burden upon and a benefit to not only each original Owner, but also that Owner's successors and assigns having any interest in the Project. By acceptance of a deed or by acquiring any ownership interest in any of the Project, each Owner hereby binds itself and its heirs, personal representatives, successors, transferee and assigns, to all of the provisions restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Owner by so doing thereby acknowledges that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all future Owners, grantees, purchasers, assignees, and transferees thereof.

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Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by and against the Owners and the Association.

2.4 Governing Documents and Applicable Laws. The Project and this Declaration are subject to the Governing Documents and all Applicable Laws. Declarant, the Association and the Owners shall take all actions and pay all costs necessary to ensure that their respective rights and obligations under this Declaration are promptly and fully performed in compliance with the Governing Documents and all Applicable Laws.

2.4.1 In the event of a conflict between the Governing Documents and this Declaration, the Governing Documents shall control. In the event of a conflict between the Applicable Laws and this Declaration, the Applicable Laws shall control. In the event of a conflict between the Applicable Laws and the Governing Documents, the Applicable Laws shall control.

2.4.2 The Governing Documents may be amended at any time upon the prior written consent of the Board of Trustees and other individuals and entities contemplated in the Governing Documents without the need for any further consent and/or approval from the Owners or any other parties, except as may be specifically required in the Governing Documents.

2.4.3 The Association shall have the right, but not the obligation, to take reasonable actions, including the imposition of assessments, to ensure that each portion of the Project shall be used subject to and in compliance with all Governing Documents and all Applicable Laws. Notwithstanding anything herein to the contrary, the Association may only levy assessments against the Owners responsible for complying with the Governing Documents and Applicable Laws. If a particular Owner is not responsible for that compliance, the Association may not levy any such assessments against that Owner.

2.4.4 If any of the Governing Documents are amended, the Association and Owners agree to subordinate and subject to those amendments, any and all interests and agreements that those parties may have relative to the Project. Within 10 days following delivery of a written request to the Association and/or Owners, those parties shall execute (with notary acknowledgment if required) and deliver to the requesting party, any further written evidence of that subordination made by that requesting party.

ARTICLE III.
THE ASSOCIATION

3.1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to the Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto and any devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto.

3.1.1. No person or entity other than an Owner may be a Member of the Association and membership in the Association cannot be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit, current copies of the Declaration, Articles Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term “available” shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

3.1.2. Any action by the Association that must have the approval of the Owners before being undertaken shall require the vote or written assent of a majority of all the Owners except as otherwise expressly set forth in this Declaration. If the Member voting results in a tie vote, then the Board shall cast the deciding vote.

3.2. **Board of Trustees.** Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of Declarant to appoint the Trustees shall terminate after the first to occur of the following:

3.2.1 Four months after seventy-five percent of the Units have been conveyed by Declarant;

3.2.2 Three years from the date on which the first Unit in the Project is conveyed; or

3.2.3 Unilateral election by Declarant in its sole discretion.

3.3 **Votes.** The Owner of each Unit shall be entitled to one vote for each Unit owned. The number of votes appurtenant to each Unit shall be permanent and shall not change. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves. No Unit shall have more than one vote, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine the existence of a quorum. Declarant shall have full voting rights with respect to each Unit which it owns.

3.4 **Amplification.** The provisions of this Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

3.5 **Initial Agent for Service.** The initial agent for service of process for the Association and on behalf of the Project shall be:

Mark B. Cohen
Fox Bay Condominiums Homeowners Association, Inc.
1132 South 500 West
Salt Lake City, Utah 84101

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The agent may be changed at any time by the Association. Upon changing the agent for service, the Association shall file a notice of that change with the Division of Corporations and Commerce for the State, and with the County, without the need to amend this Declaration.

ARTICLE IV.
PROPERTY RIGHTS IN COMMON AREAS AND UNITS

4.1. **Description of Improvements.** The Improvements contained in the Project are now or will be located upon the Project. The major Improvements contained in the Project include 15 separate 2 and 3 level Condominium Buildings, each of which will have 8 to 12 units per Building (the community center shall contain 4 condominium units). The Condominium Buildings will have exterior walls consisting primarily of wood, stucco and stone. The Condominium Buildings will have wood-frame interiors with interior wall finish of sheet rock according to applicable building codes. The Project is further described on the Plat.

4.2. **Description and Legal Status of Units.** The Plat shows each Unit number, its location, dimensions from which its size may be determined, the Common Areas to which it has immediate access and the Limited Common Areas, if any, reserved for each Unit. The undivided ownership interest in the Common Areas appurtenant to a Unit may not be partitioned from the balance of the Common Areas or Units for any reason.

4.3. **Estate of an Owner.** The Project is hereby divided into Units, each consisting of a fee simple interest in a Unit and a Percentage Interest. The Percentage Interests are hereby declared to be appurtenant to the respective Units. Each Owner shall have the right to horizontal and lateral support of that Owner's Unit and such rights shall be appurtenant to and pass with the title to each Unit.

4.4. **Title.** Title to a Unit may be held or owned by any person or more than one person and in any manner in which title to any other real property may be held or owned in the State, including, without limitation, joint tenants or tenancy in common.

4.5. **Inseparability.** No part of a Unit or the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of ownership prescribed herein, so that each Unit and the Percentage Interest appurtenant to such Unit shall always be conveyed, devised, encumbered or otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit and associated Percentage Interest, together with all appurtenant rights created by law or by this Declaration. The Common Areas shall be owned in common by all the Owners and no Owner may bring any action for partition thereof.

4.6. **Computation of Percentage Interests.** Declarant reserves the right to make minor adjustments in some or all of the Percentage Interests for the purpose of assuring that the total of all the Percentage Interests equals 100 percent. Except as set forth above, the Percentage Interests shall have a permanent character and shall not be altered without the consent of all the Members expressed in an amended declaration duly recorded.

4.7. **Owner's Rights Respecting Interiors.** Each Owner shall have the exclusive right at its sole cost to maintain, repair, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings and floors forming the boundaries of that Owner's Unit so

long as such actions do not have an adverse impact on the structural components or exterior of the Unit or anything outside the Unit.

4.8. **Separate Mortgages.** Each Owner shall have the right separately to mortgage or otherwise encumber that Owner's Unit. No Owner shall have the right to mortgage or otherwise encumber the Common Areas, except the Percentage Interest therein appurtenant to that Owner's Unit. Any Mortgage or other encumbrance of any Unit shall be subordinate to all of the provisions of this Declaration and in the event of foreclosure, this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

4.9. **Taxation.** Each Unit and appurtenant Percentage Interest shall be deemed to be a parcel and shall upon conveyance of any Unit by Declarant be assessed separately for all taxes, assessments and other charges of any political subdivision or any special improvement district or of any other taxing or assessing authority. The valuation of the Common Areas and Limited Common Areas shall be apportioned among the Units in proportion to the respective Percentage Interests appurtenant thereto. All such taxes, assessments and other charges of each respective Unit shall be separately levied against that Unit and the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

4.10. **Liens.** In the event that any judgment, claim, encumbrance or lien of any type attaches to any particular Unit, with or without the consent of the Owner or that Unit, that judgment, claim, encumbrance or lien shall not attach to or encumber any other Unit.

4.11. **Easements for Parking.** Temporary guest parking or recreational parking shall be permitted within the Common Areas only within spaces and areas clearly marked for such purpose, excepting spaces and areas as shall be specifically reserved and marked as such. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Areas, as well as to enforce those parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

4.12. **Easements for Marketing.** In addition to the other easements over the Common Areas, Declarant reserves to itself and its employees and agents easements over the Common Areas and any Units owned by Declarant to the extent necessary to market and sell the Units in the Project. Declarant may maintain sales offices, trailers or model units in the Project in the number, size, location and time-periods reasonably determined by Declarant.

4.13. **Easements for Utilities.**

4.13.1. **General.** Declarant and the Association desire to have utilities for electricity, fuel, power, cable television and all other utility services (collectively, the "Utilities") provided to the Project and located in the Common Areas, if any, and on certain portions of the Project noted on the Plat and as otherwise established in writing from time to time (collectively, the "Easement Areas"). The providers of all such utilities to the Project and their respective successors, assigns, agents, and affiliates are hereinafter collectively called the "Utility Providers".

4.13.2. **Grant.** Declarant and the Association do hereby grant to the Utility Providers a non-exclusive easement (the "Utility Easement") to, from, across, over, upon and under all the

Easement Areas to construct, maintain, operate, repair, inspect, protect, remove and replace all lines, pipes, valves, meters, equipment, facilities and other improvements reasonably and customarily necessary to provide and maintain all the Utilities to the Project and perform the Utility Providers' obligations under this Utility Easement (collectively, the "Utility Improvements"). This grant of Utility Easement is intended for the benefit of all individuals and entities comprising the Utility Providers. This Utility Easement shall include a right of ingress and egress to and from the Easement Areas. During temporary periods, the Utility Providers may use such portions of the Project along and adjacent to the Easement Areas as may be reasonably necessary in connection with the Utility Providers' obligations under this Utility Easement.

4.13.3. Utility Providers' Rights and Obligations. The Utility Providers shall take all actions and pay all costs necessary to construct, maintain in good condition, operate, repair, inspect, protect, remove and replace all their respective Utility Improvements. The Utility Providers shall exercise all their rights and obligations under this Utility Easement in a reasonable and customary manner so as to minimize disruption and damage to the Project, Declarant, the Association, the Owners and the residents, guests and invitees associated with the Project. The Utility Providers shall indemnify and hold Declarant, the Association, the Owners, and their respective lenders harmless from and against any and all liabilities, claims and expenses, including attorneys' fees, arising directly or indirectly, entirely or in part, in connection with the Utility Easements except to the extent caused by the negligence and/or intentional misconduct of the indemnified party.

4.13.4. Declarant's and Association's Rights and Obligations. Declarant and the Association shall have the right to use the surface of the Easement Areas except for the purposes for which this Utility Easement is granted provided such use does not interfere with the Utility Improvements, Utilities or any other rights granted to the Utility Providers hereunder. The Association shall not build or construct, nor permit to be built or constructed, any building or other structure on, over or across the Easement Areas, nor change the contour thereof.

4.13.5. Easements for Specific Units. A Utility Easement for the installation and maintenance of the Utilities is also reserved within each Unit. It is contemplated that the Utilities may originate in one Unit and terminate in another Unit. A right of access to all Units is reserved to Declarant, the Association, and the Utility Providers for all matters pertaining to the Utilities.

4.13.6. Term. This Utility Easement shall commence as of the date that this Declaration is recorded in the official records of the County and shall continue in perpetuity until terminated by any of the parties hereto upon written notice to the other parties hereto. The termination of this Utility Easement with respect to one or more of the Utility Providers shall not terminate this Utility Easement with respect to any other Grantee unless written notice of that termination has been sent to that Grantee.

4.13.7. Transfer. This Utility Easement shall run with, and be appurtenant to, the land associated with the Project and shall not be transferred, assigned, sold, encumbered or otherwise conveyed along with all or any portion of the Project without the consent of any other person or entity.

4.13.8. Miscellaneous. The Utility Providers shall perform their respective obligations under this Utility Easement in compliance with all Applicable Laws, permits and agreements affecting the Project. Nothing in this Utility Easement shall be construed to create any

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partnership, joint venture, or fiduciary relationship among Declarant, the Association, and/or any of the Utility Providers.

4.14. **Easements for Vehicular Traffic.** In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby covenants for itself, its successors and assigns, and all future Owners within the Project, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Project, subject to the parking provisions set forth herein. Declarant reserves the right to grant similar easements to owners of property within adjacent subdivisions or subdivisions annexed hereto, if any.

4.15. **Easements for County Use.** In addition to the foregoing easements over the Common Areas, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for county and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Areas for the purpose of enforcing the laws and permanent easements in favor of the County pursuant to the ordinances of the County to guarantee that the open spaces remain perpetually in the uses for which intended.

4.16. **Creation of Easements.** Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Units superior to all other encumbrances applied against or in favor of any portion of the Project. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Units may, but shall not be required to, set forth said easements.

4.17. **Entry Onto Units.** The Association, Declarant, and/or their respective representatives shall have the right to enter upon any Unit within the Project, without being liable to any Owner, to the extent such entry is necessary in connection with the enforcement of the provisions of this Declaration or with the performance by the Association of its duties and responsibilities under this Declaration, including, without limitation, the construction, maintenance or effectuation of emergency repairs for the benefit of the Units, the Common Areas, or for any of the Owners within the Project. Reasonable advance notice shall be given to any Owner of a Unit before such entry thereupon, except in the case of emergencies.

4.18. **Power to Grant Easements.** The Association and/or Declarant shall have the power to grant and convey in the name of all the Owners as their attorney in fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party, easements and rights-of-way in, on, over or under the Common Areas for the purpose of constructing and maintaining utility services and infrastructure improvements. Each Owner hereby appoints the Association its attorney in fact for the purposes set forth in this Section.

4.19. **Easement of Enjoyment.** Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from his or her Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Unit.

4.20. Easements for Encroachments. If any portion of the Common Areas encroaches on any portion of a Unit, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and Common Areas are made subject to such easements.

4.20.1. There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Unit or any part of the Common Areas to the extent that such roof overhang was constructed by Declarant.

4.20.2. Each Unit and Owner is granted an easement over all adjoining Units and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner.

4.20.3. In the event a structure on any Unit is partially or totally destroyed and then repaired or rebuilt, the Owner of such Unit agrees that minor encroachments over adjoining Units and the Common Areas shall be permitted and there shall be valid easements for the maintenance of the encroachments as long as they shall exist.

4.20.4. In no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner.

4.20.5. Each Unit and its Owner shall have and is hereby granted an easement appurtenant to such Unit over each adjoining Unit or the Common Areas, for overhanging roofs and eaves, and other structural components as originally constructed or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications.

4.21. Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

4.21.1. The right of the Association to suspend an Owner's voting right in the Association and an Owner's right to the use of any recreational facilities included in the Common Areas for any period during which:

4.21.1.1. An assessment on such Owner's Unit remains unpaid;

4.21.1.2. For a period not exceeding 60 days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and/or

4.21.1.3. For successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

4.21.2. The right of the Association to impose reasonable limitations on the number of guests of each Owner who at any given time are permitted to use the Common Areas;

4.21.3. The right of the County or any other governmental or quasi-governmental body having jurisdiction over the Project to have rights of access, ingress and egress over and across any

street, parking area, walkway or open area contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

4.22. **Party Walls.** Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Units and placed on the dividing line (whether horizontal or vertical) between the Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Unit and shall pass to such Owner's successors in title.

4.23. **Conveyance.** Any deed, lease, mortgage, deed of trust, sales contract or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

Unit No. _____, Building No. _____, contained within Fox Bay Condominiums, a Utah condominium development as the same is identified in the Record of Survey Map recorded in the official records of Wasatch County, State of Utah, on July 16, 2001, as Entry No. 235061, in Book 512, and Page 390 of Plats (as said Record of Survey Map may have been amended and/or supplemented) and as further defined in the Declaration of Covenants, Conditions and Restrictions, recorded in the official records of Wasatch County, State of Utah, on July 16, 2001, as Entry No. 235063, in Book 512, and Page 473, (as said Declaration may have been amended and/or supplemented);

Together with the undivided ownership interest in the Project's Common Areas which are appurtenant to the Unit.

That description shall be construed to describe the Unit, together with the appurtenant Percentage Interest in the Common Areas and to incorporate all the rights incident to ownership of a Unit and all the limitations on that ownership as described in the Declaration.

4.24. **Transfer of Title.** Declarant agrees to cause the conveyance to the Association of the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), before the first conveyance of a Unit from Declarant to a third-party purchaser.

**ARTICLE V.
ASSESSMENTS**

5.1. **Agreement to Pay Assessments.** Declarant for each Unit owned by it within the Project and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefore, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with

each other and with the Association to pay the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the first Unit.

5.1.1. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be set and such assessment may then be increased each year by up to 15 percent above the maximum assessment for the previous year without a vote of the membership regarding such increases.

5.1.2. From and after January 1 of the second year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 15 percent only by a vote of a majority of the votes (determined in accordance with Section 5.2 of Article V) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

5.1.3. The Board may fix the annual assessment at an amount not in excess of the maximum.

5.1.4. Each Unit shall be subject to specific assessments by Jordanelle Special Services District ("JSSD") for water, sewer, and other services. The Association shall have the right to make or modify additional assessments for water, sewer and other services for the Common Areas among the Owners as the Association deems appropriate. Each Owner shall pay all such assessments upon acquisition of the Unit subject to those assessments.

5.2. Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Project as follows:

5.2.1. Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building and Unit exteriors and furnishings common utility service and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management, real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Condominium Building and Unit exteriors; landscaping; wages of Association employees, including fees for a Manager; repairs and replacements of window well sump pumps; utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of and adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas and Condominium Buildings and Unit exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

The aggregate of all such items shall constitute the Common Expenses and all funds received from assessments under this Section 5.2.1 shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.



5.2.2. **Apportionment.** Common Expenses shall be apportioned among and assessed to all Units and their Owners in accordance with the assessment percentages allocated to each Unit, as set forth on Exhibit "B", which is attached hereto and incorporated herein by this reference. Declarant shall be liable for the amount of any assessments against Units owned by Declarant.

5.2.3. **Annual Budget.** Annual assessments shall be determined on the basis of a fiscal year beginning January 1, and ending December 31, next following, provided the first fiscal year shall begin on the date of conveyance of the first Unit by Declarant. On or before December 1, of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

5.2.4. **Notice and Payment.** Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 1, each year for the fiscal year beginning on January 1, next following. Except as otherwise provided by the Board, each annual assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year.

All unpaid installments of any annual assessment shall bear interest at the rate established by the Board of Trustees, not to exceed 18 percent per annum from 15 days after the date each such installment becomes due, until paid. The Board of Trustees shall also have the right to assess a late fee of up to 5 percent of any assessment installment not paid within 15 days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within 15 days of the date such installment becomes due, the Association may, at its option, and upon 15 days' prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said 15-day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed 18 percent per annum from such date until paid in full.

The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

5.2.5. **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V, Section 5.3 below, except that the vote therein specified shall be unnecessary.

5.3. **Emergency Assessment.** The Board may increase assessments necessary for emergency situations. For purposes of this Section, an emergency situation is any of the following: (i) an extraordinary expense required by an order of the court; (ii) an extraordinary expense necessary

to repair or maintain the property or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered; or (iii) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board. However, prior to the imposition or collection of such an emergency assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and such resolution shall be distributed to the Members with the notice of assessment.

5.4. Reimbursement Assessment. The term "Reimbursement Assessment" as used herein shall mean a charge against each Owner and that Owner's Unit for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of an individual Owner. A Reimbursement Assessment may also be levied by the Association for purposes of collecting any monetary penalties which may be imposed by the Association against an Owner who fails to comply with provisions of this Declaration, the determinations of the Board or the Architectural Committee, or any rule or regulation adopted by the Association. The Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Architectural Committee or the Board, the Association's Articles or Bylaws, or any rule or regulation adopted by the Association, if such failure results in the expenditure of moneys by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, and shall be due and payable to the Association when levied.

5.5. Special Assessments. In addition to the annual assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy at any time, and from time to time, upon the affirmative vote of at least 67 percent of the voting power of the Association in person or by proxy at a meeting called for such purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses).

This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the percentages allocated to each Unit, as set forth in Exhibit "B". Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than 15 days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed 18 percent per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if Declarant is only obligated to pay 25 percent of the annual assessment attributable to Units it owns pursuant to Section 5.6 below, it shall only be required to pay 25 percent of the special assessment otherwise attributable to each such Unit. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of annual assessments for the aforesaid purposes.

5.6. Uniform Rate of Assessment. The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate based on the assessment percentages allocated to each Unit, as

set forth on Exhibit "B", except that Declarant shall pay only 25 percent of the annual assessment attributable to each Unit which it owns until the conveyance by Declarant of such Unit to a third-party purchaser. If Declarant ceases to qualify for the reduced 25 percent rate during the period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rate on the basis of the number of days in the period that the Owner qualified for each rate.

Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by a resolution of the Members of the Association approving the special assessment.

So long as Declarant pays the reduced assessment rate with respect to the Units which it owns, if the assessments of the Association shall fail to equal or exceed the actual expenses incurred by the Association because of Declarant's right to pay reduced assessments, then Declarant shall pay to the Association a sufficient amount, up to the amount of the full assessment for each Unit owned by Declarant to meet any such deficit, so long as a written notice of such deficit is given by the Association to Declarant.

5.7. Notice and Quorum for Any Action Authorized Under Sections 5.1 and 5.3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.1 and/or 5.3 of this Article V shall be sent to all Members no less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 50 percent of all votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.8. Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the official records of the County. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages with the attorney for the Association being here designated as the trustee with power of sale, or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorney's fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

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5.9. Personal Obligation of Owner. The amount of any assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment or unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

A transferee of a Unit shall be jointly and severally liable with the transferor for all unpaid assessments against the Unit up to the time of the transfer, without prejudice to the transferee's right to recover from the transferor of the amount paid by the transferee for such assessments.

A lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Grantee from paying further assessments.

5.10. Personal Liability of Grantee. Except as expressly otherwise set forth herein, in a conveyance of a Unit, the grantee of that Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor or the Unit, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Association setting forth the amounts of the unpaid assessments against the grantor and the grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in that statement except to the extent that additional penalties and interest accrue on the amount set forth in that statement. Notwithstanding the foregoing, foreclosure of a lien by a First Mortgagee shall extinguish any liens for assessments payable prior to the foreclosure sale.

5.11. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner shall pay to the Association the amount assessed against the land owned by such Owner. In addition, a late charge of 10 percent shall be assessed on any assessment not paid within 15 days after the date on which it becomes due. Any assessment, including late charges and previously accrued interest associated therewith, that is not paid within 30 days after the assessment becomes due shall thereafter bear interest at an annual percentage rate of 18 percent or the highest rate allowed by the Applicable Laws, whichever is less. In the event attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the delinquent Owner shall pay actual attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

5.11.1. Enforcement by Suit. The Association may commence and maintain a suit at law against any other defaulting Owner obligated to pay assessments for such delinquent assessments as to which that defaulting Owner is personally obligated. Such suit shall be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with late charges and interest thereon as provided

for herein, costs of collection, court costs and attorneys' fees in such amount as the court may adjudge against the delinquent party. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien discussed below.

5.11.2. Enforcement by Lien.

A. Grant of Lien. There is hereby created a lien on each and every portion of the land in each Unit to secure payment to the Association of any and all assessments levied against that portion of each Unit pursuant to this Declaration, together with late charges, interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including attorneys' fees.

B. Exercise of Lien Rights. At any time after the occurrence of any delinquency in the payment of any such assessment, the Board may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within 10 days after delivery of such demand, the Board or its duly authorized representative may thereafter file and record a claim of lien on behalf of the Association in the Office of the County Recorder of the County, against all or any portion of the land with respect to which the delinquency exists. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) The name of the Owner;
- (2) The legal description of the land in the Unit against which the claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, late charges and interest thereon, collection costs, and estimated attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration; and
- (5) That a lien is claimed against the described land in the Unit in an amount equal to the amount stated, together with all other amounts thereafter becoming due from the Owner from time to time in accordance with this Declaration.

Upon recordation of a duly executed original or copy of a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the area against which such assessment was levied.

C. Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in a court or in the manner provided under the Applicable Laws. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any foreclosed land area. In connection with such action, the Association shall be allowed to recover attorneys' fees, court costs, title search fees, late charges, interest and all other costs and

expenses to the extent permitted by the Applicable Laws. Upon the timely curing of any default for which a notice of claim of lien was filed by the Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Board shall cause an officer of the Association to file and record an appropriate release of such claim of lien in the office of the Recorder of the County. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of the land owned by such Owner. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien, whether judicially, by power of sale, or otherwise, until the expiration of 10 days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner owning the land described in such claim of lien.

D. **Lien Priority.** Such a lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration, except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental assessing unit; (c) First Mortgages; (d) utility easements; (e) the Governing Documents; and (f) arms-length leases, whether or not recorded.

5.11.3. **Effect of a Sale or Transfer on Assessments.** The sale or transfer of any portion of a Unit shall not affect any assessment lien created pursuant to the term of this Declaration to secure assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent assessments; provided, however, that the sale or transfer of land in a Unit pursuant to a judicial foreclosure or foreclosure by power of sale of a First Mortgage, or by a transfer in lieu of foreclosure of a First Mortgage, shall extinguish any assessment lien which has attached and become effective with regard to the land being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any assessment lien against such land on account of assessments which became due prior to the date of such sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale or transfer which shall attach, be created and become effective and may be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. In the event that all or any portion of an assessment against any land is extinguished, the Trustees shall have the right by unanimous vote, but not the obligation, to proportionately reallocate all or any portion of that extinguished assessment among the other portions of the Units. For the purpose of this Section, a sale or transfer of land in a Unit shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the area in question. Notwithstanding the extinguishment of any assessment lien by a First Mortgage, that extinguishment shall not relieve the Party originally responsible for the delinquent assessment secured by that lien from the obligation to pay that delinquent assessment to the Association. The Association shall execute and deliver a separate subordination agreement (consistent with this Declaration) requested by any lender that holds a First Mortgage.

5.12 **Reserves and Working Capital.** In addition to its day-to-day operating funds, the Association shall establish the following funds:

5.12.1 **Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Condominium Building and Unit exteriors the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

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5.12.2 Working Capital Fund. Declarant shall have the right but not the obligation, to establish and maintain for the Project, a working capital fund equal to at least two monthly installments of the annual assessment of each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit shall be paid by Declarant to the Association within 60 days after the date of conveyance of the first Unit in the Project. With respect to each Unit for which Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Unit at the time of the closing of the sale to such purchaser or by the Association upon termination of Declarant's control of the Association as described in Section 5.11.2 of this Article V, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any annual or special assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

5.13 Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating:

5.13.1 That all annual and special assessments (including interest, costs and attorneys' fees, if any,) have been paid with respect to any specified Unit as of the date of such certificate; or

5.13.2 Annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, not to exceed the maximum amount established by law, which charge must be paid at the time the request for any such certificate is issued. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

ARTICLE VI. OPERATION AND MAINTENANCE

6.1. Maintenance of Units. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit. The Association shall have no obligation regarding maintenance or care of any Units except as set forth in Section 6.2 of this Article VI or elsewhere in this Declaration.

6.2. Maintenance of Common Areas. The Association shall provide for such maintenance, landscaping (including area within County's monument sign easement), roadway drainage system sustentation, snow removal and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall maintain the exteriors of all Units, the Common Areas, and all Condominium Buildings as follows: paint,

repair, replacement and care of roofs, gutters, downspouts, foundations, window wells, sump pumps, fences, exterior building surfaces, exterior door and other exterior improvements, as well as all trees, shrubs, grass, walks and steps located on or around a Unit. Such exterior maintenance shall not include glass surfaces and window screens or patios included on any Unit. The Association shall have the right of entry to any Unit to perform emergency repairs or do other work necessarily required to perform the maintenance obligations hereunder. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

6.3. Maintenance of Limited Common Areas. Each Owner shall keep the Limited Common Areas designated for use in connection with that Owner's Unit, if any, in a good, clean, sanitary and attractive condition; provided, however, the Association shall keep the same in a good state of repair, including without limitation the exterior of all garage doors.

6.4. Damage by Owner. In the event the need for maintenance or repair of the Common Areas, the Limited Common Areas, or the exterior of a Unit or Condominium Building is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants or invitees of an Owner, the costs of such exterior maintenance shall be added to and become a part of the assessment to which such Owner and that Owner's Unit are subject.

6.5. Professional Management. The Association may carry out through the Manager, those of its functions which are properly the subject of delegation as determined by the Association. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association and shall be responsible for management of the Project for the benefit of the Association and the Owners and shall, to the extent permitted by law and by the terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. The termination of any management contract shall not require payment of penalty or advance notice of more than 90 days notice.

6.6. Utilities. The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the common Expenses.

6.6.1. Wherever utility connections, including, without limitation, sanitary sewer house connections, water hose connections, drainage facilities, and electricity, gas, telephone and cable television lines are installed within the Project, which connections, lines or facilities, or any portion thereof, lie in or upon areas of the Project owned by persons other than the Owner of a Unit served by said connections, the Owner of any Unit served by said connections, lines or facilities shall have the right, and is hereby granted an easement to the full extent necessary therefore, to enter upon, or to have utility companies enter upon, the areas within the Project in or upon which said connection, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

6.6.2. Wherever utility connections are installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service that Owner's Unit.

6.6.3. In the event of a dispute between Owners with respect to the repair or rebuilding of any utility connections or with respect to the sharing of the cost thereof, then upon the written request of one of those Owners addressed to the Association, the matter shall be submitted to the Board and the Board shall decide and make an assessment against any or all of the Owners involved, which assessment shall be final and collected and enforced in the manner provided by this Declaration.

ARTICLE VII. INSURANCE

The Association shall at all times maintain in force insurance meeting the following requirements:

7.1. **Hazard Insurance.** A “master” or “blanket” type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; the Condominium Building and Unit exteriors; common fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations and other items normally not covered by such policies. References herein to a “master” or “blanket” type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such “master” or “blanket” policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement and by all other perils which are customarily covered with respect to projects similar to the Project, location and use, including (without limitation) all perils normally covered by the standard “all-risk” endorsement, where such endorsement is available. Such “master or “blanket” policy shall be in an amount not less than one 100 percent of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage:

7.1.1. A Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy included a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance).

7.1.2. A Replacement Cost Endorsement (under which the insurer agrees to pay up to 100 percent of the property’s insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of \$10,000 or 1 percent of the policy face amount. However, for losses related to individual Units that are covered by such a policy, the deductible related to each individual Unit shall be \$1,000. Funds to cover these deductible amounts shall be included in the Association’s operating reserve account.

7.2. **Flood Insurance.** If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy of flood insurance shall be maintained covering the Condominium Building and Unit exteriors, any machinery and equipment that are not part of a Condominium Building and Unit exteriors and all Common Areas within the Project (hereinafter “Insurable Property”) in an amount deemed appropriate, but not less than the lesser of:

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7.2.1. The maximum limit of coverage available under the National Flood Insurance Administration Program for the Condominium Building and Insurable Property within any portion of the Project located within a designated flood hazard area.

7.2.2. 100 percent of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of \$5,000 or 1 percent of the policy face amount.

7.2.3. The name of the insured under each policy required under Article VII, shall be designated by name, if required. Each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

7.2.4. Each policy required to be maintained under Article VII, shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. If FNMA is a holder of one or more Mortgages on Units within the Project, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns". In addition, such mortgage clause or other appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least 10-days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

7.2.5. Each policy required to be maintained under Article VII, shall provide, if available, for the following: recognition of any insurance trust agreement, a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

7.2.6. Each policy required to be maintained under Article VII, shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and, (3) "Steam Boiler and Machinery coverage Endorsement", if the Project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of \$2,000,000 or the insurable value of the Condominium Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

7.3. **Fidelity Bonds.** The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager

shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls and the bank in which the funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three (3) months' aggregate assessments in all Units.

The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar term or expressions; (3) the premium on all bonds required herein for the Association, (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as a part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days prior written notice to the Association, to any Insurance Trustee and to each servicer of loans on behalf of FNMA.

7.4. **Liability Insurance.** The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Condominium Building and Unit exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project under the Association's supervision and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. Coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for similar projects, location and use. Nevertheless, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance or use of the Common areas, and/or Condominium Building and Unit exteriors and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project, location and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least 10 days' prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

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7.5. Insurance Trustees and General Requirements Concerning Insurance.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to Article VII, shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a "B" general policyholder's rating or a financial performance index of "6" or better in the Best's Key Rating Guide or an "A" or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, an Owner, or FNMA) from collecting insurance proceeds.

The provisions of Article VII shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

7.6. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repair or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

7.7. Insurance Rates. Nothing shall be done or kept in the Project which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any governing laws.

**ARTICLE VIII.
DAMAGE OR DESTRUCTION**



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8.1 **Attorney in Fact.** All of the Owners hereby irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by said grantee of the Association as his or her attorney in fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration. The Association shall have the right to appoint an insurance company trustee to act on behalf of the owners and the Association in connection with the settlement of any condemnation awards and insurance claims.

8.2. **Definition of Repair and Reconstruction.** Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage and destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

8.3. **Procedure.** In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

8.3.1. **Notice to First Mortgagees.** The Association shall give timely written notice to any holder of any First Mortgage on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Unit subject to such First Mortgage.

8.3.2. **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

8.3.3. **Sufficient Insurance.** If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed portion of the Project, such repair and reconstruction shall be carried out.

8.3.4. **Insufficient Insurance, Less than 75 Percent Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than 75 percent of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected, together with the proceeds of insurance are insufficient to pay all actual costs of such repair and reconstruction.

8.3.5. **Insufficient Insurance, 75 Percent or More Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if 75 percent or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within 100 days following the damage or destruction and Owners entitled to vote at least seventy five-percent of the votes of the Members to carry out such repair and reconstruction. If, however, the

Owners do not, within 100 days after such damage or destruction, elect by a vote of at least 75 percent of the votes of the Members elect by a vote to carry out such repair and reconstruction but rather elect to terminate the Project and if Eligible Mortgagees who represent 51 percent of the votes of the Units subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the official records of the County, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

8.3.5.A The Project shall be deemed to be owned in common by the Owners;

8.3.5.B Each Owner shall own an undivided interest in the Project equal to such Owner's Percentage Interest as set forth on Exhibit "B";

8.3.5.C Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

8.3.5.D The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner. The division of funds shall be based on the fair market values of the Units immediately prior to the damage or destruction and the Owners shall divide said funds based upon the relative value of the Units prior to the damage or destruction.

8.3.6. Priority. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

8.4. Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction as attorney in fact for the Owners and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein.

The Project shall be restored or repaired in substantially the same condition in which it existed prior to the damage or destruction, with Unit, Condominium Buildings and Commons Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original architectural plans and specifications.

8.5. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to this Article VIII, shall constitute a fund for the payment of costs of repair after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all such repair reconstruction, such balance shall be distributed to the Owners equally.

8.6. Amendment of Article. This Article VIII shall not be amended unless Owners entitled to vote at least 75 percent of the votes of the Members consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Board of Trustees of the Association and recorded in accordance with the provisions of this Declaration.

8.7. Rights of Mortgage Holders, Insurers, or Guarantors. The holder, insurer, or guarantor of the mortgage on any Unit shall have the right to timely written notice of (a) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage; (b) any 60-day delinquency in the payment of assessments or charges owned by the Owner of any Unit on which it holds, insures, or guaranties, the mortgage; (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and/or (d) any proposed action that requires the consent of a specific percentage of eligible mortgage holders. Any mortgage holder, insurer, or guarantor desiring such notice shall send a written request for the foregoing information to the Association, stating both its name and the address and the Unit number or address of the Unit on which it has (or insures or guarantees) the mortgage.

ARTICLE IX. CONDEMNATION

9.1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article IX shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt, written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof.

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements or agreements with the condemning authority for acquisition of the Common Areas, or any part thereof and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.

9.2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

9.3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units and/or Condominium Buildings immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

9.4. Partial Taking.

9.4.1. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

9.4.1.A The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).

9.4.1.B The total amount apportioned to severance damages shall be allocated and distributed equally to the Owners of those Units which have not been taken.

9.4.1.C The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.

9.4.1.D The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

9.4.1.E If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable.

9.4.1.F Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

9.4.1.G No provision of this Article IX or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

9.4.2. Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event, the Project shall be reorganized as follows:

9.4.2.A If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

9.4.2.B If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.

9.4.2.C If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

9.4.2.D The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Article IX; provided, however, that if any such determination

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shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

9.5. **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VIII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE X.
TERMINATION

10.1. **Required Vote.** Except as otherwise provided in Articles VIII and IX, the Project may be terminated only by agreement of Owners entitled to vote at least 67 percent of the votes attributable to all Units and by eligible mortgage holders who represent at least 51% of the votes of the unit estates that are subject to mortgages held by eligible mortgage holders.

10.2. **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by the Eligible Mortgagees who represent Units subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within 30 days after receipt of proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the official records of the County, and is effective only upon recordation.

10.3. **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

10.4. **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to this Article X. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale.

Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interest may appear, based on the relative value of each Unit and/or Condominium Building. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration.

During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

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10.5. Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lien holder.

ARTICLE XI.
GENERAL USE RESTRICTIONS

11.1. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interest of the Owners.

11.2. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominium Buildings. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines and similar devices approved by the Board may be made available within the Common Areas.

11.3. Use of Units. Each Unit shall be used only as a single-family residence. No Unit or Condominium Building shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Units, Condominium Buildings or Common Areas.

11.4. Business or Commercial Activity. No part of the Project or a Unit shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion or portions of the Project for model homes sites and display and sales offices during the construction and sales period and to accomplish any of Declarant's other rights and obligations hereunder. The provisions of this Section shall not preclude professional and administrative occupations in a Unit without external evidence thereof, for so long as such occupations are in conformance with County ordinances, all other applicable governing laws and ordinances, and are merely incidental to the use of the Unit as a residential home.

11.5. Exception for Declarant. Notwithstanding the restrictions contained in this Article XI, for the five year period following the date on which this Declaration is filed for record in the official records of the County, Declarant shall have the right to use any Unit owned by it and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Units. Such offices and model Units may be located in any Unit owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Project for the purpose of aiding Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Project. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Units, signs, banners or similar devices.

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11.6. **Leases.** Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing, there is no restriction on the right of any Owner to lease a Unit. An Owner shall be responsible and liable for any damage to the Project caused by its tenant. The Owner shall indemnify Declarant, the Association and the Project from and against any liabilities, claims and expenses, including attorneys' fees, incurred in connection with any such lease and/or tenant.

11.7. **Nuisances.** No Unit shall be used, occupied, or altered in violation of the Applicable Laws, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Units and/or Common Areas, if any. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Project and no odors shall be permitted to arise therefrom so as to render any part of the Project unsanitary or unsightly or which would be offensive or detrimental to any other part of the Project or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Project so as to be offensive or detrimental to any other part of the Project, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Project without the prior written approval of the Board.

11.8. **Animal Restrictions.** No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on or within any Unit, Condominium Building, Limited Common Areas, Common Areas, or otherwise within the Project, except usual and ordinary dogs, cats, fish, birds and other household pets (excluding without limitation, equine, bovine, sheep, swine, goats and other such animals) may be kept in Units, subject to rules and regulations adopted by the Association, and provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two pets per household, provided, however, that the Association (or the Architectural Committee or other such person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. No pet shall weigh more than 60 pounds.

11.8.1. The Association acting through the Board of Trustees shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure, an enclosed patio, or on a leash being held by a person capable of controlling said animals. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended, out of the enclosure, and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant or a person designated by Declarant to do so (for so long as Declarant owns any interest in the Project), to a shelter under the jurisdiction of the local municipality in which the Project is situated and subject to the laws and rules governing such shelter, or to a comparable animal shelter.

11.8.2. Furthermore, any Owner shall be absolutely 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 within the Project by an Owner or by

members of his family, his tenants or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Areas or any other area within the Project.

11.9. **Trash.** No rubbish, trash or garbage or other waste material shall be kept or permitted on or within any Unit, Condominium Building, Limited Common Areas, Common Areas or otherwise within the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Units only when set out for a reasonable period of time (not to exceed 24 hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever except barbecue fires contained within appropriate receptacles therefore.

11.10. **Temporary and Other Structures.** No structures of a temporary nature, trailer, basement, house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Project at any time. All Units erected and maintained within the Project shall be of good construction, of good quality, workmanship and material.

11.11. **Unsightly Articles.** No unsightly articles shall be permitted to remain on or near a Unit so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

11.12. **No Further Subdividing.** No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit, to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

11.13. **Signs.** No sign of any kind shall be displayed to the public view without approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Units and except such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit for sale or lease. Display of any "for sale" or "for lease" sign more than three feet by two feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one square foot in surface area. Numbers on residences shall be located in a position clearly legible. Any existing street sign identifying the Project may not be changed without prior approval by the Association.

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11.14. **No Hazardous Activities.** No activities shall be conducted on the Project and no improvements shall be constructed on the Project, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Project and no open fires nor incinerators shall be lighted or permitted on the Project except in a contained barbecue unit while attended and in use for cooking purposes.

11.15. **Repair of Buildings.** No improvement upon the Project shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

11.16. **Improvements and Alterations.** There shall be no excavation, construction or alteration which in any way alters the exterior appearance or structure of any Improvement within the Project, no alteration of any structural component of any Unit, no plumbing or electrical work outside the Unit, no removal of any Unit or other Improvement within the Project (other than repairs or rebuilding) without the prior written approval of the Architectural Committee.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee.

All Improvements and alterations shall be performed in compliance with all applicable laws. No Owner shall perform any work or make any alterations or changes which would jeopardize the soundness or safety of any portion of the Project, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first obtained.

11.17. **Outside Installations.** No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Unit or elsewhere if exposed to view from any other Unit. Such antennas, if used, must be of the type that is installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development.

11.18. **Toxic Materials.** No Owner shall store, use, manufacture, process, distribute, treat, transport, handle, emit, dispose of, discharge or release any Toxic Materials in violation of environmental laws governing the Project. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against any liabilities, claims and/or expenses (including attorneys' fees) arising in connection with that Owner violation of this Section.

The term "*Toxic Materials*" as used herein shall mean any flammable explosives, asbestos, industrial substances, pollutants, contaminants, chemicals, wastes, discharges, emissions, radioactive materials and other hazardous substances, whether injurious by themselves or in combination with other materials, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" described in the environmental laws governing the Project.

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11.19 Parking and Vehicular Restrictions. No Owner shall park, store or keep any vehicle, except wholly within the parking area designated therefore, and any inoperable vehicle shall be stored only in enclosed garages. No Owner shall park, store or keep on any property or street (public or private) within the Project 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 (including, but not limited to, any camper unit or motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, upon any unenclosed parking space, so as to be visible from anywhere in the Project. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation. Any vehicle owned or controlled by an Owner, to be parked within the Project is subject to approval by the Board. No Owner shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Unit or upon the Common Areas, except wholly within the Owner's garage, and then only when the garage door is closed; provided, however, that such activity shall at no time be permitted if it is determined by the Board to be a nuisance. Garage doors shall remain closed except for reasonable periods while the garages are being used. Recreational vehicles may temporarily be parked, from time to time, for periods not to exceed four hours for purposes of loading, unloading and cleaning.

11.20 Laundry and Storage. No clothing or fabrics shall be hung, dried or aired in such a way in the Project as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Project except, within an enclosed structure or appropriately screened from view.

11.21 No Overloading. No Owner shall bring or store any item or substance, or permit any action, in any Unit that will cause damage to a Condominium Building. No Owner shall overload a floor on that Owner's Unit.

11.22 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. Declarant shall enjoy the same rights and assume the same duties with respect to each unsold Unit.

11.23 View, Light and Air. No Owner or Unit shall be entitled to, or guaranteed, specific rights to any certain amount or type of view, light and/or air in connection with any portion of the Project.

ARTICLE XII. MORTGAGEE PROTECTION

12.1. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and number or address of the Unit, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

12.1.1. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

12.1.2. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of 60 days;

12.1.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

12.1.4. Any proposed action which would require the consent of Eligible Mortgagees as specified in Section 12.2 below or elsewhere herein.

12.2. Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least 67 percent of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on 67 percent of Units held by Eligible Mortgagees shall be required to:

12.2.1. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

12.2.2. To partition or subdivide any Unit;

12.2.3. To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas (except for the granting of easement for utilities and similar purposes consistent with the intended use of the Common Areas);

12.2.3. To use hazard insurance proceeds resulting from damage to any part of the Project (except within a Unit) for purposes other than the repair, replacement or reconstruction of such improvements, except as otherwise provided in this Declaration;

12.2.4. To materially change the Percentage Interests or obligations of any Unit.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within 30 days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

12.3. Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws and other rules concerning the Project as well as its own books, records and financial statements available for inspection by the Owners or by holders, insurers and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours. The Association shall make an audited financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end.

12.4. Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage

affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment of charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession of a purchaser from such mortgagee which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

12.5. **Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 7.1 of Article VII lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

12.6. **Priority.** No provision of this Declaration or the articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

12.7. **Implied Approval.** In the event that the approval of an Eligible Mortgagee is required under this Declaration, that Mortgagee's approval shall be deemed given if the party requesting that approval does not receive any written disapproval from the Mortgagee within 30 days after delivering to that Mortgagee a written request for the same.

ARTICLE XIII.
ARCHITECTURAL COMMITTEE

13.1. **Members of Committee.** The Architectural Committee shall consist of not less than three members but not more than five members as shall be determined by the Board. Declarant shall appoint all of the original members of the Architectural Committee and all replacements until one year following the date of issuance of the Final Plat for the Project. Declarant shall have the right and power to appoint and remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either, (i) 90 percent of the Units subject to this Declaration have been sold and the deeds recorded with the County recorder, or (ii) 5 years following the date of issuance of the final Plat for the Project, whichever occurs earlier. Commencing one year from the date of close of escrow for the sale of the first Unit in the Project to a purchaser from Declarant, the Board shall have the power to appoint one member to the Architectural Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Persons appointed to the Architectural Committee by the Board shall be Members of the Association, but persons appointed to the Architectural Committee by Declarant need not be Members of the Association. The Architectural Committee 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 Project. The Architectural Committee may designate and appoint a representative who is a licensed architect and a majority of the members of said

Architectural Committee may, from time to time, remove or replace such representative. The designated representative of the Architectural Committee may be, but need not be, a Member of the Architectural Committee.

13.2. Review of Plans and Specifications. The Architectural Committee shall consider and act upon any and all 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 Architectural Committee. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Project shall be commenced maintained, painted, erected or otherwise altered 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 and approved in writing by the Architectural Committee. The address for submission of such plans and specifications shall be the address of the principal place of business of the Association. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area of Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement on such changes therein as the Architectural Committee deems appropriate, upon the agreement by the Person (referred to in this Section as "Applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or upon the agreement of the applicant to reimburse the Association for the cost of such maintenance, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, require a fee payable to the Association to accompany each application for approval, or require any additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The Architectural Committee 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, elevation drawings or descriptions or samples of exterior material and colors. Decisions of the Architectural Committee and the reasons therefore shall be transmitted by the Architectural Committee to the applicant at the address set forth in the application for approval within 30 days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within 30 days after the date of receipt by the Architectural Committee of such application or additional information.

13.3. Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee 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 Architectural Committee, except the granting of



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variances pursuant to this Article. In the absence of such designation, the vote of a majority of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

13.4. **Decisions.** All decisions by the Architectural Committee shall require a majority vote of all the members of that Committee.

13.5. **No Waiver of Future Approvals.** The approval of the Architectural Committee 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 Architectural Committee, 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 matter whatever subsequently or additionally submitted for approval or consent.

13.6. **Compensation of Members.** The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

13.7. **Inspection of Work.** Inspection of work and correction of defects therein shall proceed as follows:

13.7.1. Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Architectural Committee.

13.7.2. Within 60 days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such 60-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

13.7.3. If, upon the expiration of 30 days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than 45 days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance in the Office of the County recorder and may remove the noncomplying Improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including legal fees, incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a special Reimbursement Assessment against such Owner for reimbursement.

13.7.4. If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within 60 days after delivery of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

13.8. **Non-liability of Architectural Committee Members.** Neither Declarant, the Architectural Committee nor any Member of the Architectural Committee, the Board nor their duly authorized representatives, shall be liable to the Association, or to any Owner or any other person or entity for

any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and 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 Project generally. The Architectural Committee 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 Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or designs from the standpoint of structural safety or conformance with building or other codes.

13.9. **Variance.** The Architectural Committee 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 at least two members of the Architectural Committee, and shall become effective upon recordation in the official records of the County. 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 that Owner.

13.10. **Appeal.** In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request for appeal must be received by the Board not more than 30 days following the final decision of the Architectural Committee. Within 45 days following the receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said 45-day period shall be deemed a decision in favor of the appellant.

**ARTICLE XIV.
DEFAULTS AND REMEDIES**

14.1. **Default.** An "Event of Default" shall occur under the Declaration if any party governed hereby fails to perform its obligations under this Declaration where those obligations are due and that party has not performed the delinquent obligations within 30 days following delivery to that party of written notice of such delinquency (the "Notice of Default"). These provisions shall not supersede any restrictive requirements set forth elsewhere in this Declaration.

14.1.1 **Notice of Default to Mortgage Holders.** Any Mortgage Holder shall be entitled to receive from the Association or Declarant, if such Mortgage Holder has so requested in writing of the Association or Declarant, a copy of any notice of default issued by the Association or Declarant to each other or to the owner of the portion of the Project mortgaged in favor of such Mortgage Holder.

14.2. **Remedies.**



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14.2.1. General. Upon the occurrence of an Event of Default, the Association shall have the right to exercise all rights and remedies available in this Declaration, at law and in equity, including injunctive relief and specific performance. The Owners acknowledge that their obligations under this Declaration are unique and defaults may not be compensated by purely monetary damages. Those rights and remedies shall be cumulative. Under no circumstances, even an Event of Default, shall any Owner have the right to terminate the Declaration or take any action that would damage, injure, impair, prohibit or revoke approvals, licenses, permits, uses or other rights associated with the other Owners or their respective portions of the Project that are not in default under this Declaration.

14.2.2 Cure. Furthermore, the Association shall have the right to cure the default and seek reimbursement from the defaulting Owner for the costs incurred in effecting such cure. Notwithstanding any provision herein to the contrary, the Owner shall reimburse the Association for such costs of curing a default within 15 days following delivery to the defaulting Owner of a written notice of such costs along with reasonable support documentation.

14.2.3 Right to Cure. Commencing upon receipt of any such notice of default, a Mortgage Holder shall have the right and time to cure any default described in that notice in accordance with the time periods for such cure contemplated in this Declaration before any remedies are exercised against the then defaulting party. In no event shall such cure period be less than 30 days following receipt of such notice of default by the Mortgage Holder. If the default in question is a non-monetary default that cannot reasonably be cured within that 30-day period, then no Party shall exercise any remedies so long as the Mortgage Holder commences to cure the default in question within that 30-day period and thereafter diligently and in good faith continues that cure to completion.

14.2.3. Additional Remedies. In addition to any other enforcement rights and remedies described in the Declaration, the Association may take any of the following actions against any Owner whose act or failure to act violates or threatens to violate any provision of this Declaration: impose monetary penalties, including late charges and interest; suspend voting rights in the Association; suspend use privileges for the Common Area; and/or remove the defaulting Owner from the Board and/or the Architectural Committee.

14.2.4. No Cross-Defaults. If any Owner shall create an Event of Default hereunder, only the defaulting Owner shall be subject to remedies and none of the other Owners governed by this Declaration shall be deemed to be in default or be penalized in any manner. For example, if an Owner shall cause an Event of Default, the Association may exercise its rights and remedies against the defaulting Owner, but shall not take any action that would damage, injure, impair, prohibit or revoke approvals, licenses, permits, uses or other rights associated with the other Owners that are not in default under this Declaration.

14.2.5. Jurisdiction. Any judicial or arbitration action associated with the Declaration shall be taken in the courts within the jurisdiction where the Project is located.

14.2.6. Enforcement by County. The County shall have the right, but not the obligation, to exercise all rights and enforce all provisions in this Declaration. The County shall have no obligations or liabilities under this Declaration except to the extent that the County seeks to exercise rights or remedies under this Declaration in breach thereof or in violation of any applicable laws.

14.2.7. Enforcement by Declarant and Owners. In addition to the Association, Declarant and any Owner or the successor-in-interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, and the right to recover damages or other sums for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association, Declarant or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

14.2.8. Non-liability of Officials. To the fullest extent permitted by law, Declarant, the Board, the Architectural Committee, the County any other committees of the Association or any Member of such Board or committee shall not be liable to any Owner or Member for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties. None of the Related Parties associated with the entities and individuals referenced in the immediately preceding sentence shall have any personal, recourse and/or deficiency liability in connection with this Declaration or the Project except to the extent that such liability have been separately undertaken in a writing signed by such person and/or entity. The rights and obligations under this Section survive the transfer or termination of this Declaration for any reason.

**ARTICLE XV
OTHER MORTGAGE HOLDER RIGHTS**

15.1 Inspection Rights. All Mortgage Holders shall, at their own cost, upon written request to any Party be entitled to inspect the books and records of the Association or Declarant relative to this Declaration and the Project during normal business hours.

15.2 Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise. This Declaration shall not be amended without the prior written consent of the Mortgage Holders.

15.3 Subjection and Subordination to Amendments. This Agreement shall be recorded against the Project senior to all other liens (other than liens of non-delinquent taxes and assessments). Each person or entity that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, shall be deemed to subject and subordinate such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section. Each such person or entity shall be obligated to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the requesting Party.

ARTICLE XVI

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OTHER LENDER PROTECTIONS AND REQUIREMENTS

The following provisions are incorporated into this Declaration with the intent that this Declaration and the Project satisfy Part VIII (Project Standards), Chapter 6 (Legal Guidelines) of the Fannie Mae Selling Guide, as amended ("FNMA Project Standards") along with any other requirements of FNMA and Freddie Mac. These provisions should be read in conjunction with the other provisions in the Project Documents. The FNMA Project Standards are hereby incorporated into this Declaration as though fully set forth herein. In the event of any conflict between the FNMA Project Standards and the Project Documents, the FNMA Project Standards shall govern. In the event of any conflict between the provisions in this Article and those in any of the other Project Documents, the provisions in this Article shall govern.

16.1 Requirements. The Project, the Association, the Units, and the Owners shall at all times comply with all requirements instituted by FNMA and/or Freddie Mac from time to time. Declarant, the Association, and/or the Board of Directors shall have the right to unilaterally amend the Project Documents at any time, without the consent of the Owners, to the extent necessary to comply with any existing or future FNMA or Freddie Mac requirements. The Owners and all Mortgage holders hereby automatically subordinate their interests in the Project and Units to any such amendments without the need for any further written evidence of that subordination. Nevertheless, if requested to do so, the Owners and all Mortgage holders shall deliver to the requesting party written evidence of that subordination within 10 days following delivery of a written request for the same to those Owners and/or mortgage holders.

16.2 Amendments to Documents [FNMA Project Standards 601.03].

16.2.1 Owners. Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least 67 percent of the total votes of the Owners.

16.2.2 Eligible Mortgage Holders. Except as provided elsewhere in this Declaration, any amendment of a material nature of this Declaration shall require the affirmative vote or written approval of the eligible mortgage holders who represent at least 51 percent of the votes of Unit estates that are subject to mortgages held by eligible mortgage holders. "Eligible mortgage holders" shall mean those holders of a first mortgage on a unit estate who have submitted a written request that the owners Association notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders. A change to any of the provisions governing the following would be considered as material: (a) voting rights; (b) increases in assessments that raise the previously assessed amount by more than 25 percent, assessment liens, or the priority of assessment liens; (c) reductions in reserves for maintenance, repair, and replacement of common elements; (e) responsibility for maintenance and repairs; (f) reallocation of interest in the general or limited common elements, or rights to their use; (g) redefinition of any Unit boundaries; (h) convertibility of Units into common elements or vice versa; (i) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (j) hazard or fidelity insurance requirements; (k) imposition of any restrictions on the leasing of Units; (l) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; (m) a decision by the Association to establish self-management if professional management had been required previously by the Project Documents or by an eligible mortgage holder; (n) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Documents; or (o) any provision that expressly benefits mortgage holders, insurers, or guarantors.

Implied approval shall be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "Return Receipt" requested.

16.2.3 Declarant. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration at any time so long as (a) Declarant is the Owner of any Unit in the Project; and (b) the amendment be necessary to comply with, or requested by (i) FNMA or any federally chartered lending institution as a condition precedent to lending funds upon the security of the Project, any Units or any portions thereof; and/or (ii) any federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of any aspect of the Documents or the Project. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying, if relevant, the institution or agency requesting the amendment and setting forth the amendatory language requested by such institution or agency. Recordation of such an amendment shall be deemed conclusive proof of the institution or agency's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning, development and initial sales of all of the Units. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

16.2.4 Recordation. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the official records of the County of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred.

16.3 Rights of Action [FNMA Project Standards 608.08]. The Association – and any aggrieved Owner – shall have a right of action against Owners who fail to comply with the provisions of the Project documents or the decision made by the Association. Any Owner shall also have the right to enforce the Project documents against the Association in the event that the Association fails to comply with those Project documents.

16.4 Summary Abatement [FNMA Project Standards 608.09]. Declarant and/or the Association shall have the right to use summary abatement or similar means to enforce restrictions against a Unit or its use so long as judicial proceedings are instituted before any items of construction are altered or demolished.

16.5 Rights of Mortgage Holders, Insurers, or Guarantors [FNMA Project Standards 610]. The holder, insurer, or guarantor of the mortgage on any Unit shall have the right to timely written notice of (a) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage; (b) any 60-day delinquency in the payment of assessments or charges owned by the Owner of any Unit on which it holds, insures, or guaranties, the mortgage; (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and/or (d) any proposed action that requires the consent of a specific percentage of eligible mortgage holders. Any mortgage holder, insurer, or guarantor desiring such notice shall send a written request for the foregoing information to the Association, stating both its name and

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the address and the Unit number or address of the Unit on which it has (or insures or guarantees) the mortgage.

16.6 Affordable Housing Restrictions [FNMA Project Standards 611]. The Project is located in an area that is subject to certain restrictions as a means of providing affordable housing as set forth in that certain Affordable Housing Agreement dated as of June 1, 2001, by and among Wasatch County; The Wasatch County Housing Authority, a Utah non-profit corporation; Blue Ledge Corporation, a Delaware corporation; and Fox Bay Condominiums, L.C., a Utah limited liability company, and recorded in the Official Records of Wasatch County on July 16, 2001, as Entry No. 235060 at Book 512 and Page 0371-0389, as amended from time to time (the "Affordable Housing Agreement"). All of the Units in the Project are subject to the Affordable Housing Agreement. The Affordable Housing Agreement may impair a mortgage holder's legal rights to remedy a default under the mortgage or require the mortgage holder to send a notice of default or of foreclosure to a third party (including a zoning authority or local jurisdiction) as set forth in that Agreement. The Affordable Housing Agreement imposes certain resale controls that affect the restricted Units as set forth in that Agreement. It is understood that FNMA will not purchase or securitize mortgages secured by restricted Units if FNMA's future sale of a Unit that FNMA acquires through foreclosure or acceptance of a deed in lieu of foreclosure will be subject to any resale restrictions. The Affordable Housing Agreement contains provisions that exempt FNMA from affordable housing restrictions on future sales of a Unit.

ARTICLE XVII. REDUCTION OF PROJECT

17.1 Reduction Option. Declarant herewith expressly reserves the unconditional and exclusive right and option, without obligation or the approval of any other person or entity except as required by the Applicable Laws, to reduce the Project (the "Reduction Option") by withdrawing or eliminating from the Project any land, Improvements and associated Common Areas to the extent that such land and Improvements are owned exclusively by Declarant (collectively, the "Reduced Property"). Declarant reserves the right to exercise all or any portion of the Reduction Option and to separately develop all or any portion of the Reduced Property at any time. The Reduction Option may have the effect of altering the fees, assessments, and liabilities imposed upon the Owners in an amount that cannot be determined until some future date.

17.2 Unrestricted Option. Declarant shall have the right, in Declarant's sole discretion, to exercise all or any portion of the Reduction Option with respect to all or any portion of the Reduced Property at any time, under or in any order, size, amount, configuration, boundary, location, style, manner, or condition without limitations or restrictions of any type and without the approval of the existing or future Association, Owners, Board, Architectural Committee and/or any other person and/or entity associated with the existing Project or the Reduced Property except as required by the Applicable Laws. Declarant shall have no obligation to exercise the Reduction Option. Notwithstanding the foregoing, Declarant shall exercise the Reduction Option in accordance with the requirements of this Article XVII, the County, all other governmental entities, and the Applicable Laws.

17.3 No Representations or Restrictions. Notwithstanding anything in this Declaration to the contrary, except as set forth in this Article XVII, Declarant makes no assurances, representations or warranties with respect to the Reduced Property and there are no limitations of any type as to any of the following pertaining to any portion of, or improvement associated with, the Reduced

Property: compatibility with or similarity to the existing Project, appearance, materials, components, quality, construction, architecture, style, size, location, appearance, materials, description, and/or other improvements. Declarant reserves the right to develop, implement and modify all criteria associated with the Reduced Property in Declarant's sole discretion without any approval or consent from any other person or entity except as required by the Applicable Laws.

17.4 **Reduced Property Documents.** In connection with any Reduced Property, Declarant shall prepare and, where appropriate, record in the official records of the County, (a) an amendment to this Declaration, (b) an amendment to the Bylaws of the Association, (c) a supplemental plat and (d) any other documents desired by Declarant and/or required by the Applicable Laws (collectively, the "Reduced Property Documents"). The Reduced Property Documents shall be in a form approved by Declarant, in its sole discretion, without any approval or consent from any other person or entity except as required by the Applicable Laws. The Reduced Property Documents shall be considered part of the Governing Documents. The Reduced Property Documents shall comply with all Applicable Laws. The Association and Owners and their respective Related Parties and lenders shall promptly take all actions and sign all documents requested by Declarant or as otherwise necessary to accomplish the transactions associated with the Reduction Option and the Reduced Property Documents.

17.5 **Alteration of Percentage Interests.** The Reduced Property Documents shall reflect, among other matters, that the Percentage Interest shall be recalculated so that the Percentage Interest shall be equal to the ratio between each Owner and the aggregate number of all the Owners in the entire Association after the Reduced Property is removed therefrom. The total of the Percentage Interests pertaining to all Owners in the entire Association after the Reduced Property is removed from the Project shall in all events equal one hundred percent (100%).

ARTICLE XVIII
MISCELLANEOUS

18.1. **Act.** This Declaration and the Project are intended to be governed by the Act and all other applicable laws. In the event of any conflict between the Act and this Declaration, the Act shall govern.

18.2. **Declarant Exemption.** Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration shall be construed as to prevent or limit Declarant's rights to perform Declarant's rights and obligations hereunder, to complete development of the Project and construction of Improvements therein, nor Declarant's rights to maintain model units or homes, construction, sales or leasing offices or similar facilities on any property in the Project owned by Declarant or the Association, nor Declarant's right to promote and market the Project or to post signs incidental to construction, sales, or leasing. Declarant shall have the right to exercise all rights of the Association so long as Declarant owns at least 25 percent of the Units in the Association. In order that said work may be completed and the Project established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be construed to:

18.2.1. Prevent Declarant, its successors or assigns, 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 said work, including, without limitation, subdividing, grading,

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constructing, or making Improvements to Units, Common Areas, or other facilities and Improvements in the Project.

18.2.2. Prevent Declarant, its successors or assigns, or their contractors or subcontractors, from altering construction plans and designs, or from effectuating such alterations, as Declarant deems advisable and as are acceptable to the Architectural Committee, for any part of the Project throughout the course of development.

18.2.3. Limit the right of Declarant, its assigns, contractors, subcontractors or representatives, to, on any Unit or portion thereof, or portion of the Common Areas or Project, make, construct, install and maintain such reasonable structures or Improvements as Declarant deems necessary, for the establishing the Project as a residential community and disposing of the same in Units by sale, lease or otherwise; including, without limitation, signs, models, displays, booths, decorations, sales and promotion centers, directional signs, and any other structure associated with marketing and the disposition of Units.

18.2.4. Prevent Declarant, its assigns, contractors, subcontractors or representatives, on any Unit or portion thereof, or portion of the Common Areas or Project, to establish or allow on that area additional temporary uses, for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Project, (including, without limitation, licenses, reservations, rights-of-way, easements, parking, rights of access, or any other reasonable alternative use as may be reasonably necessary to the proper development and disposal of the Project), and to grant such uses to others (including, without limitation, Declarant's agents, employees, utility companies, representatives, contractors, subcontractors, and prospective purchasers), provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Areas by the Members.

18.3. Conveyance and Release. All of Declarant's rights and obligations under this Declaration may be assigned, transferred and conveyed voluntarily or by operation of law without the consent of any Owner or Eligible Mortgagee. Upon Declarant's conveyance of any or all of its obligations in connection with the Project, the Association and/or this Declaration, Declarant shall be entirely released and exonerated from those obligations.

18.4. Limitations on Declarant's Liability.

18.4.1. No Representations. Each person that acquires a Unit is responsible to reasonably investigate that Unit and the Project. Declarant conveys each Unit in "as is" condition without any representation or warranty as to that Unit or the Project. Each Owner acquires each Unit at that Owner's own risk. Each Owner that acquires a Unit covenants that such Owner has read this Declaration and has had the opportunity to discuss this Declaration with legal counsel of that Owner's choosing.

18.4.2. Non-Recourse Liability. The Related Parties of Declarant shall have no personal, deficiency or recourse liability in connection with the Association, the Owners, and/or the Related Parties of the foregoing, the Project, and/or this Declaration, the Project Documents, and/or any documents or matters related to any of the foregoing (the "Documents"). Declarant shall have no liability in connection with the Related Parties of the Association or Owners.



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18.4.3. **Limitations on Damages.** Declarant shall only be liable for actual compensatory damages directly caused by Declarant's gross negligence or intentional misconduct. Declarant's liability for actual compensatory damages shall be limited solely to Declarant's interest in the Association, the Project, and/or the Documents. If Declarant fails to pay any actual compensatory damages allowed by this Agreement, the only remedy of a plaintiff against Declarant shall be the termination of Declarant's interest in the Association, the Project, and/or the Documents. Declarant shall have no liability for consequential, exemplary, punitive damages, or other damages in addition to actual compensatory damages, as those damages may be further limited by the Documents.

18.4.4. **Indemnification.** The Owners and the Association shall indemnify Declarant and/or its Related Parties from and against any liabilities, claims and/or expenses, including attorneys' fees, incurred by Declarant and/or its Related Parties in connection with the Association, the Owners, and/or the Related Parties of the foregoing, the Project, and/or the Documents except to the extent caused solely by the gross negligence or intentional misconduct of Declarant without any negligence or willful misconduct by any other person or entity. Declarant shall not be required to indemnify any other person or entity or its Related Parties for any liabilities, claims or expenses, including attorneys' fees, to the extent caused by the negligence or intentional misconduct or breach of the Documents or applicable laws caused by the person or entity requesting indemnification and/or to the extent covered by insurance in favor of the person or entity requesting indemnification. Any indemnification given by Declarant shall be limited solely to matters caused by Declarant's gross negligence or intentional misconduct.

18.4.5. **Release.** To the fullest extent permitted by law, the Association, the Owners, and their respective Related Parties hereby waive all claims (in law, equity and/or otherwise) against Declarant and Declarant's Related Parties, arising directly or indirectly out of, and knowingly and voluntarily assumes the risk of, and agrees that Declarant and Declarant's Related Parties shall not be liable to the Association, the Owners, and their respective Related Parties for, any of the following: (i) injury to or death of any person associated with the Association, the Owners, and their respective Related Parties, and/or the Project; or (ii) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic loss, and consequential or resulting damage of any kind from any cause. The obligations under this Section shall survive the expiration or earlier termination of this Declaration for any reason until all claims within the scope of this Section are fully, finally and absolutely barred by the applicable statutes of limitations. The Association and the Owners hereby acknowledge that this Section was negotiated with Declarant in good faith, that the consideration for this Section is fair and adequate.

18.4.6. **Claims.** In the event the Association, the Owners, and their respective Related Parties, or anyone claiming rights through the foregoing, has any claim, demand, offset, right or defense assertable against Declarant or Declarant's Related Parties in connection with the Association, the Owners, and their respective Related Parties, the Project, and/or the Documents (collectively, a "Claim"), such Claim shall be entirely barred, and fully released and waived, unless a party commences legal proceedings respecting such Claim within six months after the first occurrence of the event on which the Claim is based. For the purposes of this subsection, legal proceedings shall be considered commenced only upon the filing of a demand for arbitration or filing a complaint as contemplated in this Agreement.

18.4.7. **Jurisdiction.** Any action against or involving Declarant shall only be brought in the city in which Declarant's principal office is located unless Declarant expressly agrees otherwise.

18.4.8. Duty to Defend. Every indemnification under the Documents includes the right, but not the obligation, of the indemnified Party to give the indemnifying Party written notice demanding that the indemnifying Party provide the indemnified Party with competent legal counsel acceptable to the indemnified Party. The indemnifying Party shall take all actions and pay all costs necessary to provide such counsel within five days following delivery of such request. The indemnifying Party shall pay all ongoing costs associated with that counsel's representation of the indemnified Party. Alternatively, the indemnified Party shall have the right, in its sole discretion, to select its own legal counsel to represent the indemnified Party in any such action. Within 15 days following delivery to the indemnifying Party of a written request for reimbursement of the costs of such counsel, the indemnifying Party shall deliver to the indemnified party full reimbursement of those costs.

18.4.9. Amendment. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Unit, this Declaration shall not be directly or indirectly, entirely or in part, amended without the prior written consent of Declarant which may be given or withheld in Declarant's sole discretion. Until such time as Declarant has transferred 90 percent of all the Units, this Declaration may be amended only upon the majority vote of the Board of Trustees. After Declarant has transferred 90 percent of all the Units, any amendment to this Declaration shall require the affirmative vote or written approval of at least 67 percent the total votes of the Owners as otherwise provided herein.

18.4.9.1. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the official records of the County of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred.

18.4.9.2. Notwithstanding anything in this Declaration to the contrary, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by (a) any lender having a security interest in any portion of the Project; (b) any governmental agency that requests such an amendment as a condition precedent to such lender's or agency's approval of the Declaration-or performance of some obligation or granting of some right associated with the Project; and/or (c) Declarant in order to accomplish Declarant's purposes in connection with the Project and this Declaration. Any such amendment shall be effected by the recordation by Declarant of an amendment duly and unilaterally signed by or on behalf of an authorized officer of Declarant with that signature acknowledged. Recordation of such an amendment shall be deemed conclusive proof of such lender's and/or agency's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within 10 years from the date of recording the Declaration, and so long as Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of Declarant alone may amend or terminate this Declaration prior to the closing of sale of any Unit.

18.5. Conflicts. In case of any conflict between this Declaration and the Articles or Bylaws, this Declaration shall control.

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18.6. **Attorneys' Fees.** In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing party shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees to be reimbursed by the non-prevailing party.

18.7. **No Waiver.** Any party's failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by another party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

18.8. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Declaration which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; wars; civil commotions; fires; other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay, or stoppage.

18.9. **Request for Notice.** The Association and Declarant hereby request that a copy of any notice of default and a copy of a notice of sale under any mortgages, deeds of trust or other liens or encumbrances filed for record against any Units or the Project be mailed to the Association as follows: The Fox Bay Condominiums Homeowner Association, Inc., 1132 South 500 West, Salt Lake City, Utah 84101, Attention: Peter S. Cooke, pursuant to Utah Code Annotated Section 57-1-26, as amended.

18.10. **Notices.** In each instance in which notice is to be given under this Declaration, the same shall be in writing and may be delivered personally or by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the recipient at its most recent address known to, or reasonably ascertainable by, the party giving the notice. Any notice so deposited in the mail within the State of Utah shall be deemed delivered 48 hours after such deposit. Any notice to be given to the Association may be delivered personally to any Trustee of the Board or sent by the United States mail, certified or registered, postage prepaid, return receipt requested. Any notice so deposited in the mail within the State of Utah shall be deemed delivered 48 hours after such deposit.

18.11. **Term.** This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of 40 years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by 75 percent of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within 6 months prior to the expiration of the initial effective period hereof or any 10-year extension.

18.12. **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

18.13. **Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Project may be assigned whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

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18.14. **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

18.15. **Covenants to Run With Land.** This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner, user or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to and agrees to be bound by, each and every provision of this Declaration.

18.16. **Lists of Owners and Eligible Mortgagees.** The Association shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him or her; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the official records of the County. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

18.17. **Effective Date.** This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the official records of the County.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the Effective Date.

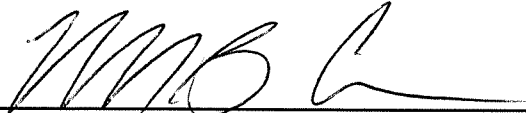
DECLARANT:

FOX BAY CONDOMINIUMS, L.C.,
a Utah limited liability company

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By: KC3, L.C.,
a Utah limited liability company, Managing Member

By: PSC DEVELOPMENT COMPANY,
a Utah corporation, Manager

By: 

Mark B Cohen, President

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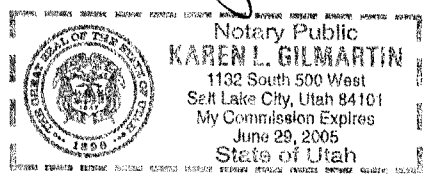
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STATE OF UTAH)
)
) :SS
COUNTY OF SALT LAKE)

On this 25th day of Nov, 2002 personally appeared before me, Mark B Cohen, the signer of the above instrument, who duly acknowledged to me that he is the President of PSC Development Company, a Utah corporation, which corporation is the Managing Member of KC3, L.C., a Utah limited liability company, which company is the Managing Member of Fox Bay Condominiums, L.C., a Utah limited liability company, and that he executed the same as duly authorized in the capacity indicated.

Karen L. Gilmartin
NOTARY PUBLIC
Residing at: Salt Lake City Ut.

My Commission Expires:
June 29, 2005



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ASSOCIATION

The undersigned hereby consents to this Declaration.

FOX BAY CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC.,
a Utah nonprofit corporation

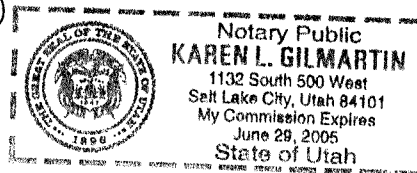
By: [Signature]
Print Name: Mark B. Cohen
Title: President

STATE OF UTAH)
) :ss
COUNTY OF SALT LAKE)

On this 25th day of Nov, 2002 personally appeared before me, Mark B Cohen, the signer of the above instrument, who duly acknowledged to me that he is the President of the Fox Bay Condominiums Homeowners Association, Inc., a Utah nonprofit corporation, and that he executed the same as duly authorized in the capacity indicated.

[Signature]
NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:
June 29, 2005



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EXHIBIT "A"
FOX BAY CONDOMINIUMS

Property Description

The Fox Bay Condominiums, a Utah condominium project as identified in the Record of Survey Map recorded July 15, 2001, as Entry No. 235061, in Book 512, at Page 390 of Plats (as said Record of Survey Map may have been amended and/or supplemented).

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EXHIBIT "B"
FOX BAY CONDOMINIUMS

Summary of Units, Square Footage, Votes and Percentage Interest

<u>Building</u>	<u>Unit</u>	<u>Address</u>	<u>Square Footage</u>	<u>Vote</u>	<u>Percentage Interest</u>	
A	101	1820 West Fox Bay Drive	964	1	.7575%	
	102		964	1	.7575%	
	103		964	1	.7575%	
	104		964	1	.7575%	
B	101	1808 West Fox Bay Drive	964	1	.7575%	
	102		964	1	.7575%	
	103		964	1	.7575%	
	104		964	1	.7575%	
	201		964	1	.7575%	
	202		964	1	.7575%	
	203		964	1	.7575%	
	204		964	1	.7575%	
	301		964	1	.7575%	
	302		964	1	.7575%	
	303		964	1	.7575%	
	304		964	1	.7575%	
	C	101	1800 West Fox Bay Drive	964	1	.7575%
		102		964	1	.7575%
		103		964	1	.7575%
		104		964	1	.7575%
201			964	1	.7575%	
202			964	1	.7575%	
203			964	1	.7575%	
204			964	1	.7575%	
301			964	1	.7575%	
302			964	1	.7575%	
304			964	1	.7575%	
D		101	1790 West Fox Bay Drive	964	1	.7575%
		102		964	1	.7575%
		103		964	1	.7575%
		104		964	1	.7575%
		201		964	1	.7575%
	202		964	1	.7575%	
	203		964	1	.7575%	
	204		964	1	.7575%	
	301		964	1	.7575%	
	302		964	1	.7575%	

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	303		964	1	.7575%
	304		964	1	.7575%

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EXHIBIT "B"
FOX BAY CONDOMINIUMS

Summary of Units, Square Footage, Votes and Percentage Interest
Continued

Building	Unit	Address	Square Footage	Vote	Percentage Interest
E	101	1790 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
F	101	1756 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
G	101	1800 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
H	101	1716 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%

H

E 251127 B 0589 P 0757

EXHIBIT "B"
FOX BAY CONDOMINIUMS

Summary of Units, Square Footage, Votes and Percentage Interest
Continued

Building	Unit	Address	Square Footage	Vote	Percentage Interest
I	101	1699 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
J	101	1729 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
K	101	1743 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
L	101	1751 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%

E 251127 B 0589 P 0758

EXHIBIT "B"
FOX BAY CONDOMINIUMS

Summary of Units, Square Footage, Votes and Percentage Interest
Continued

Building	Unit	Address	Square Footage	Vote	Percentage Interest
M	101	1771 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
N	101	1679 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%
P	101	1797 West Fox Bay Drive	964	1	.7575%
	102		964	1	.7575%
	103		964	1	.7575%
	104		964	1	.7575%
	201		964	1	.7575%
	202		964	1	.7575%
	203		964	1	.7575%
	204		964	1	.7575%

E 251127 B 0589 P 0759

11/25/2002 16:27:35

PARCEL ##	NAME	PROP ADDRESS	ACRES
00-0020-0816	FOX BAY COND 0FY-0101-A-024-024	1820 W FOX BAY DR UNIT A	0.02
00-0020-0817	FOX BAY COND 0FY-0102-A-024-024	1820 W FOX BAY DR UNIT A	0.02
00-0020-0818	FOX BAY COND 0FY-0103-A-024-024	1820 W FOX BAY DR UNIT A	0.02
00-0020-0819	FOX BAY COND 0FY-0104-A-024-024	1820 W FOX BAY DR UNIT A	0.02
00-0020-0820	FOX BAY COND 0FY-0101-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0821	FOX BAY COND 0FY-0102-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0822	FOX BAY COND 0FY-0103-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0823	FOX BAY COND 0FY-0104-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0824	FOX BAY COND 0FY-0201-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0825	FOX BAY COND 0FY-0202-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0826	FOX BAY COND 0FY-0203-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0827	FOX BAY COND 0FY-0204-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0828	FOX BAY COND 0FY-0301-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0829	FOX BAY COND 0FY-0302-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0830	FOX BAY COND 0FY-0303-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0831	FOX BAY COND 0FY-0304-B-024-024	1808 W FOX BAY DR UNIT B	0.02
00-0020-0832	FOX BAY COND 0FY-0101-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0833	FOX BAY COND 0FY-0102-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0834	FOX BAY COND 0FY-0103-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0835	FOX BAY COND 0FY-0104-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0836	FOX BAY COND 0FY-0201-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0837	FOX BAY COND 0FY-0202-C-024-024	1800 W FOX BAY DR UNIT C	0.02
00-0020-0838	FOX BAY COND 0FY-0203-C-024-024	1800 W FOX BAY DR UNIT C	0.02

ESC quits, & moves bar, PgDn, PgUp gets more data, <Enter> selects

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

E 251127 B 0589 P 0760

11/25/2002 16:27:41

PARCEL ##	NAME	PROP	ADDRESS	ACRES
00-0020-0839	FOX BAY COND 0FY-0204-C-024-024	1800 W	FOX BAY DR UNIT C	0.02
00-0020-0840	FOX BAY COND 0FY-0301-C-024-024	1800 W	FOX BAY DR UNIT C	0.02
00-0020-0841	FOX BAY COND 0FY-0302-C-024-024	1800 W	FOX BAY DR UNIT C	0.02
00-0020-0842	FOX BAY COND 0FY-0303-C-024-024	1800 W	FOX BAY DR UNIT C	0.02
00-0020-0843	FOX BAY COND 0FY-0304-C-024-024	1800 W	FOX BAY DR UNIT C	0.02
00-0020-0844	FOX BAY COND 0FY-0101-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0845	FOX BAY COND 0FY-0102-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0846	FOX BAY COND 0FY-0103-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0847	FOX BAY COND 0FY-0104-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0848	FOX BAY COND 0FY-0201-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0849	FOX BAY COND 0FY-0202-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0850	FOX BAY COND 0FY-0203-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0851	FOX BAY COND 0FY-0204-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0852	FOX BAY COND 0FY-0301-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0853	FOX BAY COND 0FY-0302-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0854	FOX BAY COND 0FY-0303-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0855	FOX BAY COND 0FY-0304-D-024-024	1790 W	FOX BAY DR UNIT D	0.02
00-0020-0856	FOX BAY COND 0FY-0101-E-024-024	1768 W	FOX BAY DR UNIT E	0.02
00-0020-0857	FOX BAY COND 0FY-0102-E-024-024	1768 W	FOX BAY DR UNIT E	0.02
00-0020-0858	FOX BAY COND 0FY-0103-E-024-024	1768 W	FOX BAY DR UNIT E	0.02
00-0020-0859	FOX BAY COND 0FY-0104-E-024-024	1768 W	FOX BAY DR UNIT E	0.02
00-0020-0860	FOX BAY COND 0FY-0201-E-024-024	1768 W	FOX BAY DR UNIT E	0.02
00-0020-0861	FOX BAY COND 0FY-0202-E-024-024	1768 W	FOX BAY DR UNIT E	0.02

ESC quits, & moves bar, PgDn, PgUp gets more data, — <Enter> selects

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

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11/25/2002 16:27:47

PARCEL ##	NAME	PROP ADDRESS	ACRES
00-0020-0862	FOX BAY COND 0FY-0203-E-024-024	1768 W FOX BAY DR UNIT E	0.02
00-0020-0863	FOX BAY COND 0FY-0204-E-024-024	1768 W FOX BAY DR UNIT E	0.02
00-0020-0864	FOX BAY COND 0FY-0101-F-024-024	1756 E FOX BAY DR UNIT F	0.02
00-0020-0865	FOX BAY COND 0FY-0102-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0866	FOX BAY COND 0FY-0103-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0867	FOX BAY COND 0FY-0104-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0868	FOX BAY COND 0FY-0201-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0869	FOX BAY COND 0FY-0202-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0870	FOX BAY COND 0FY-0203-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0871	FOX BAY COND 0FY-0204-F-024-024	1756 W FOX BAY DR UNIT F	0.02
00-0020-0872	FOX BAY COND 0FY-0101-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0873	FOX BAY COND 0FY-0102-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0874	FOX BAY COND 0FY-0103-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0875	FOX BAY COND 0FY-0104-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0876	FOX BAY COND 0FY-0201-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0877	FOX BAY COND 0FY-0202-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0878	FOX BAY COND 0FY-0203-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0879	FOX BAY COND 0FY-0204-G-024-024	1736 W FOX BAY DR UNIT G	0.02
00-0020-0880	FOX BAY COND 0FY-0101-H-024-024	1716 W FOX BAY DR UNIT H	0.02
00-0020-0881	FOX BAY COND 0FY-0102-H-024-024	1716 W FOX BAY DR UNIT H	0.02
00-0020-0882	FOX BAY COND 0FY-0103-H-024-024	1716 W FOX BAY DR UNIT H	0.02
00-0020-0883	FOX BAY COND 0FY-0104-H-024-024	1716 W FOX BAY DR UNIT H	0.02
00-0020-0884	FOX BAY COND 0FY-0201-H-024-024	1716 W FOX BAY DR UNIT H	0.02

ESC quits, & moves bar, PgDn, PgUp gets more data, — <Enter> selects

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

E 251127 B 0589 P 0762

11/25/2002 16:27:52

PARCEL ##	NAME	PROP	ADDRESS	ACRES
00-0020-0885	FOX BAY COND 0FY-0202-H-024-024	1716 W FOX BAY DR	UNIT H	0.02
00-0020-0886	FOX BAY COND 0FY-0203-H-024-024	1716 W FOX BAY DR	UNIT H	0.02
00-0020-0887	FOX BAY COND 0FY-0204-H-024-024	1716 W FOX BAY DR	UNIT H	0.02
00-0020-0888	FOX BAY COND 0FY-0101-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0889	FOX BAY COND 0FY-0102-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0890	FOX BAY COND 0FY-0103-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0891	FOX BAY COND 0FY-0104-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0892	FOX BAY COND 0FY-0201-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0893	FOX BAY COND 0FY-0202-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0894	FOX BAY COND 0FY-0203-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0895	FOX BAY COND 0FY-0204-I-024-024	1699 W FOX BAY DR	UNIT I	0.02
00-0020-0896	FOX BAY COND 0FY-0101-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0897	FOX BAY COND 0FY-0102-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0898	FOX BAY COND 0FY-0103-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0899	FOX BAY COND 0FY-0104-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0900	FOX BAY COND 0FY-0201-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0901	FOX BAY COND 0FY-0202-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0902	FOX BAY COND 0FY-0203-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0903	FOX BAY COND 0FY-0204-J-024-024	1729 W FOX BAY DR	UNIT J	0.02
00-0020-0904	FOX BAY COND 0FY-0101-K-024-024	1743 W FOX BAY DR	UNIT K	0.02
00-0020-0905	FOX BAY COND 0FY-0102-K-024-024	1743 W FOX BAY DR	UNIT K	0.02
00-0020-0906	FOX BAY COND 0FY-0103-K-024-024	1743 W FOX BAY DR	UNIT K	0.02
00-0020-0907	FOX BAY COND 0FY-0104-K-024-024	1743 W FOX BAY DR	UNIT K	0.02

ESC quits, & moves bar, PgDn, PgUp gets more data, — <Enter> selects

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

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11/25/2002 16:27:54

PARCEL ##	NAME	PROP ADDRESS	ACRES
00-0020-0908	FOX BAY COND 0FY-0201-K-024-024	1743 W FOX BAY DR UNIT K	0.02
00-0020-0909	FOX BAY COND 0FY-0202-K-024-024	1743 W FOX BAY DR UNIT K	0.02
00-0020-0910	FOX BAY COND 0FY-0203-K-024-024	1743 W FOX BAY DR UNIT K	0.02
00-0020-0911	FOX BAY COND 0FY-0204-K-024-024	1743 W FOX BAY DR UNIT K	0.02
00-0020-0912	FOX BAY COND 0FY-0101-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0913	FOX BAY COND 0FY-0102-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0914	FOX BAY COND 0FY-0103-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0915	FOX BAY COND 0FY-0104-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0916	FOX BAY COND 0FY-0201-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0917	FOX BAY COND 0FY-0202-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0918	FOX BAY COND 0FY-0203-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0919	FOX BAY COND 0FY-0204-L-024-024	1751 W FOX BAY DR UNIT L	0.02
00-0020-0920	FOX BAY COND 0FY-0101-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0921	FOX BAY COND 0FY-0102-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0922	FOX BAY COND 0FY-0103-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0923	FOX BAY COND 0FY-0104-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0924	FOX BAY COND 0FY-0201-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0925	FOX BAY COND 0FY-0202-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0926	FOX BAY COND 0FY-0203-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0927	FOX BAY COND 0FY-0204-M-024-024	1771 W FOX BAY DR UNIT M	0.02
00-0020-0928	FOX BAY COND 0FY-0101-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0929	FOX BAY COND 0FY-0102-N-024-024	1770 W FOX BAY DR UNIT N	0.02
00-0020-0930	FOX BAY COND 0FY-0103-N-024-024	1779 W FOX BAY DR UNIT N	0.02

ESC quits, & moves bar, PgDn, PgUp gets more data, — <Enter> selects

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

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E 251127 B 0589 P 0764

11/25/2002 16:27:58

PARCEL ##	NAME	PROP ADDRESS	ACRES
00-0020-0931	FOX BAY COND 0FY-0104-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0932	FOX BAY COND 0FY-0201-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0933	FOX BAY COND 0FY-0202-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0934	FOX BAY COND 0FY-0203-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0935	FOX BAY COND 0FY-0204-N-024-024	1779 W FOX BAY DR UNIT N	0.02
00-0020-0936	FOX BAY COND 0FY-0101-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0937	FOX BAY COND 0FY-0102-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0938	FOX BAY COND 0FY-0103-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0939	FOX BAY COND 0FY-0104-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0940	FOX BAY COND 0FY-0201-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0941	FOX BAY COND 0FY-0202-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0942	FOX BAY COND 0FY-0203-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0943	FOX BAY COND 0FY-0204-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0944	FOX BAY COND 0FY-0301-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0945	FOX BAY COND 0FY-0302-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0946	FOX BAY COND 0FY-0303-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0947	FOX BAY COND 0FY-0304-P-024-024	1797 W FOX BAY DR UNIT P	0.02
00-0020-0948	DEER CREST A 0JV-0001-0-024-024		3.52
00-0020-0949	DEER CREST A 0JV-0002-0-023-024		14.05
00-0020-0950	DEER CREST A 0JV-0003-0-024-024		8.65
00-0020-0951	DEER CREST A 0JV-00PN-0-023-024		8.60
00-0020-0952	UNITED PARK OWC-0027-A-024-024		0.52
00-0020-0953	UNITED PARK OWC-0027-B-024-024		1.20

ESC quits, & moves bar, PgDn, PgUp gets more data, <Enter> selects

THIS PARCEL CAME FROM PROPERTY TAKEN BY USA FOR HWY, I DON'T THINK THIS ACREAGE HAD EVER BEEN INCLUDED IN OWC-0027-E SO I AM NOT GOING TO LESS IT OFF OF THAT CARD.

1 FOX BAY CONDOMINIUMS LC

235061 (0512/0390)

U E 251127 B 0589 P 0765