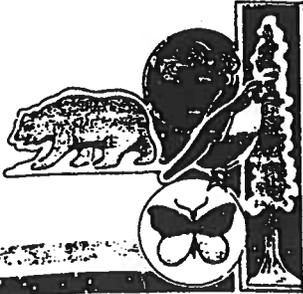


1732836



State  
of  
California

OFFICE OF THE SECRETARY OF STATE

CORPORATION DIVISION

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

OCT 15 1993



*March Fong Eu*

Secretary of State

ARTICLES OF INCORPORATION

OF

OCT 14 1993

NEWLAND PARK CONDOMINIUM ASSOCIATION

MARCH FONG EU, Secretary of State

FIRST: The name of the corporation is Newland Park Condominium Association ("Corporation").

SECOND: This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law. The following purpose is included within the foregoing purpose:

To further and promote the interests and welfare of the Owners of condominiums located in the City of Garden Grove, County of Orange, State of California, commonly known as Newland Park Condominium Association.

THIRD: This Corporation shall have no capital stock and shares therein shall not be issued. This Corporation shall have two classes of Members, the qualifications for each of which shall be those prescribed in this Corporation's Bylaws. The interest of each Member may be evidenced by a certificate or other written documentation issued by this Corporation under terms to be fixed by its Bylaws. Failure to issue such certificate or other written documentation shall in no event affect the rights, privileges or liabilities of membership.

FOURTH: This Corporation is one which does not contemplate pecuniary gain or profit to the Members thereof, and is organized

solely for nonprofit purposes. In no event shall the net earnings, income or assets of this Corporation be distributed to, or inure to the benefit of, any Member, Director or Officer of this Corporation or other private individual, either directly or indirectly, except upon winding up and dissolution. Upon the winding up and dissolution of this Corporation, after paying or adequately providing for the debts and obligations of this Corporation, the remaining assets may be distributed to the Members of this Corporation in accordance with such Member's relative interests in the Condominiums as provided in that certain Declaration of Covenants, Conditions and Restrictions for Newland Park Condominiums (the "Declaration"). Notwithstanding the foregoing, without the approval of 100% of the Members, so long as there is any Common Area for which this Corporation is obligated to provide management, maintenance, preservation or control:

(a) This Corporation or any person acting on its behalf shall not:

(1) Transfer all or substantially all of its assets; or

(2) File a certificate of dissolution; and

(b) No court shall enter an order declaring this Corporation duly wound up and dissolved.

FIFTH: Subject to the limitations of the Nonprofit Mutual Benefit Corporation Law of the State of California, an amendment to these Articles may be adopted by complying with the provisions of this paragraph. So long as there are two classes of membership, any amendment to these Articles shall require the vote

or written assent of (1) a majority of the Board of Directors, (2) the Declarant (as defined in the Declaration) and (3) Members holding fifty-one percent (51%) of the votes held by Members of this Corporation other than Declarant. At such time as two classes of membership no longer exist, any amendment to these Articles shall require the vote or written assent of (1) a majority of the Board of Directors and (2) Members holding fifty-one percent (51%) of the votes in this Corporation and of Members holding fifty-one percent (51%) of the votes held by Members other than Declarant.

SIXTH: The name and address in this state of this Corporation's initial agent for service of process is:

William Rance King, Jr.  
3737 E. Broadway  
Long Beach, CA 90803

SEVENTH: Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this Corporation.

Dated: 10/4/93 1993

  
WILLIAM RANCE KING, JR.  
Sole Incorporator

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**BYLAWS**  
**OF**  
**NEWLAND PARK CONDOMINIUM ASSOCIATION**  
A California Nonprofit Mutual Benefit Corporation

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**BYLAWS  
OF  
NEWLAND PARK CONDOMINIUM ASSOCIATION**

A California Nonprofit Mutual Benefit Corporation

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**ARTICLE I**

**Name of the Association**

The name of the Association is Newland Park Condominium Association ("Association").

**ARTICLE II**

**Introduction**

**2.01 Incorporation of Definitions.**

The definitions contained in the Superseding Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration") recorded in this Project are applicable to the same terms used in these Bylaws.

**ARTICLE III**

**Meetings of Members**

**3.01 Special and Regular Annual Meetings of Members.**

- (a) At least once a year, a regular annual meeting of Members shall be held at approximately the same time each year. The exact time shall be decided by the Board.
- (b) The first annual Member meeting must be held within six (6) months after the closing of the First Sale of a Condominium authorized for sale in the DRE public report.
- (c) Every year, the Board must schedule subsequent annual Member meetings within thirty (30) days of the same date as the first meeting (not on a legal holiday).

- (d) At the annual meetings, Members shall elect a Board of Directors in accordance with these Bylaws and transact other Association business.
- (e) Special meetings shall be held pursuant to Corporations Code Sections 7510 and 7511.

3.02 **Notice of Meetings.**

Notice of meetings (Regular or Special) shall be given in compliance with Corporations Code Section 7511.

3.03 **Conduct of Meetings.**

Member meetings must be conducted in accordance with a recognized system of parliamentary procedures as the Association may adopt.

3.04 **Action Without a Meeting.**

Any action (except the election of directors) that may be taken at any Members' meeting may be taken without a meeting in compliance Corporation Code Section 7513.

3.05 **Quorum.**

- (a) The presence, in person or proxy, of Members entitled to cast a majority of the total voting power of the Association constitute a quorum for all Member meetings (except as otherwise specifically provided in these Bylaws or the Declaration).
- (b) Once a quorum has been established at a meeting, Members may do business until adjournment, even if attendance becomes less than the quorum amount during the course of the meeting, and as long as any action taken is approved by at least a majority of the Members required to constitute a quorum.
- (c) Whether or not a quorum is present, a majority of Members present (in person or by proxy) may adjourn the meeting until a date not less than five (5) nor more than thirty (30) days from the original meeting date, with the quorum requirement for the new meeting reduced to twenty-five percent (25%) of total voting power. Notice of the adjourned meeting need not be given if the time and place is announced prior to adjournment.

3.06 **Proxies.**

A Member may vote by proxy executed in writing by the Member (or duly authorized attorney-in-fact) in compliance with Corporate Code Section 7613.

3.07 **Voting and Election of Directors.**

- (a) Voting for Board members will be by secret written ballot, unless unanimously waived by the Members present.
- (b) Cumulative voting in the election of Board Members is required for all elections in which more than two positions are to be filled and is subject only to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the Corporations Code, which currently provides for cumulative voting only if (1) at least one member has announced an intention to cumulative voting, and (2) if candidates have been placed in nomination prior to voting. Under such voting, a member may give one candidate a number of votes equal to the number of directors to be elected, or distribute the votes among the candidates in any manner.
- (c) The first election of Directors to the Board of Directors of the Association shall be conducted at the first meeting of the Association. They shall serve until the next regular annual meeting of the members.
- (d) Not less than twenty percent (20%) of the total number of Board Directors ("specially elected" directors) shall be elected by a majority vote of the Members (other than Declarant) as long as:
  - (1) A majority of Association voting power resides in the Declarant; or
  - (2) There are two outstanding classes of Association Membership.
- (e) If twenty percent (20%) of the total number of Board Directors is a fractional number, the number of Directors to be elected by Members other than Declarant will be rounded to the next higher whole number.

3.08 **Membership and Voting Rights.**

The membership and voting rights contained in the Declaration are incorporated herein by reference.

3.09 **Record Date.**

The Record Date for determining the Members entitled to notice and to vote shall be determined in compliance with Corporate Code Section 7611.

3.10 **Inspectors of Election.**

Inspectors of Election may be appointed in compliance with Corporation Code Section 7614.

**ARTICLE IV**

**Association's Books and Records;  
Rights to Inspection**

4.01 **Books and Records of the Association.**

- (a) The Board will keep membership registers (including mailing addresses and telephone numbers), account books and minutes of meetings of Members, the Board, and committees as reasonably necessary.
- (b) Association books and records except those documents that are reasonably determined by the Board to be confidential (e.g., ballots), are available for inspection and copying by any Association Member (or representative) at any reasonable time and for a purpose reasonably related to a Member's interest at the Association office (or other location established by the Board).

**ARTICLE V**

**Board of Directors**

5.01 **Powers and Duties of the Board.**

Association activities shall be conducted under the direction of a Board of Directors (subject to the Governing Documents and the California Nonprofit Mutual Benefit Corporation Law specifying action that must be approved by the Members).

5.02 **Number, Election, and Term of Office.**

- (a) The authorized number of Directors shall be not less than three (3) or more than five (5). The exact number of Directors within these limits shall be fixed by approval of the Board.

- (b) The terms of office of the Directors shall be as follows (except as otherwise stated) :
  - (i) if there are three (3) Directors, two (2) Directors shall serve for three (3) years; one (1) Director shall serve for two (2) years; (ii) if there are five (5) Directors, three (3) Directors shall each serve three (3) year terms, and two (2) shall serve two (2) year terms. At any election of Directors by Members where more than one (1) Director will be elected, the candidates receiving the highest number of votes shall, in order starting with the most votes, fill the Director positions starting with the position designated with the longest terms.
- (c) The initial Directors shall be designated by the incorporator as soon as practical after the incorporation of the Association. The incorporator shall designate one of the two (2) Directors appointed to a two (2) year term to be replaced, regardless of the time served, at the election to take place at the first annual meeting of Members as specified below.
- (d) At the first annual meeting of Members, the Members, not including the Declarant, shall elect one (1) Director to replace the Director specified by the incorporator to be replaced at this election. The other Directors shall continue to fulfill the remaining terms of office plus continue to serve any additional time until the next annual meeting immediately following the expiration of the official term.

#### 5.03 Vacancies.

- (a) A vacancy exists if:
  - (1) A Director resigns, dies, or is removed from office;
  - (2) The Members increase the number of authorized Directors but do not elect the additional Directors at the meeting; or
  - (3) The Members do not elect the full number of Directors.
- (b) Board vacancies (except as a result of removal) or a vacancy for a specially elected Director may be filled by a simple majority of Directors for a term of office until a successor is elected at an annual or special meeting of Members.
- (c) The Board may declare vacant the office of a Director who is convicted of a felony or declared of unsound mind by a final court order.
- (d) Members may elect:
  - (1) Directors to fill any vacancy not filled by the Directors, at any time; and
  - (2) Additional Directors, at the meeting in which an increase in the number of Directors is authorized.

- (e) Members other than Declarant shall elect a successor to the position specially elected Director made vacant by death, resignation or removal.

5.04 **Removal of Directors.**

- (a) Directors may be removed pursuant to the provisions of Corporation Code Sections 7222 and 7223.
- (b) Specially elected Director(s) may be removed from office prior to expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Members other than Declarant.
- (c) Unless the entire Board is removed, no individual Director may be removed if the votes cast against such removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Directors were then being elected.

5.05 **Regular Meetings.**

- (a) The Board must hold no less than one (1) meeting per quarter on dates established by Board resolution.
- (b) Notice of Regular Board meetings must be given to each Director at least four (4) days before the meeting date.
- (c) The notice of meeting shall be posted at a prominent place in the Common Area, unless it is unsuitable for such posting, in which case the Board shall communicate the notice by appropriate means.

5.06 **Special Meetings and Notices.**

- (a) Special Meetings of the Board of Directors may be called at any time for any purpose by the President, Vice President, or any two (2) Directors.
- (b) Written notice specifying the time, place and the nature of business to be conducted at the Special Meeting must be delivered to each Director at least seventy-two (72) hours before the meeting.
- (c) The notice shall be communicated to Members as specified in Section 5.05(c) herein.

5.07 **Place Of Meetings.**

The meetings shall be held within the Property itself unless, in the judgment of the Board, a larger meeting room is required than exists within the Property in which case the meeting room selected shall be as close as possible to the Property.

5.08 **Waiver of Notice.**

- (a) A Director may sign a waiver of notice, written consent, or approval of minutes of any meeting.
- (b) Waivers and consents must be filed with Association records or made a part of the minutes of the meeting.
- (c) Director attendance at a Board meeting waives the Director's notice of meeting.

5.09 **Adjournment.**

- (a) A majority of the Directors present (whether or not they constitute a quorum) may adjourn to another time and place.
- (b) Notice shall be given to any directors not present.

5.10 **Quorum.**

- (a) A quorum for the transaction of business is a majority of the number of Directors.
- (b) A meeting at which a quorum is initially present may continue to transact business after Directors withdraw, provided that any action is approved by a majority of the required quorum.

5.11 **Action Without Meeting.**

- (a) The Board may take action without a meeting if all Board Members file their written consent to the action with the Minutes of the Board proceedings.
- (b) Within three (3) days an explanation of the action shall be posted at a prominent place within the Common Area, unless it is unsuitable for such posting, in which case the explanation shall be communicated by other appropriate means.

5.12 **Conduct of Meeting**

- (a) All Board meetings (except Executive Sessions) are open to all Association Members and mortgage holders (although non-Board Members may not participate in deliberations or decisions unless expressly authorized to do so by a majority of a quorum of the Board).
- (b) Directors may participate in a meeting by telephone as long as all Directors participating can hear one another.

5.13 **Executive Sessions.**

- (a) With the approval of a majority of its Members, the Board may adjourn a meeting and reconvene in executive session to consider litigation affecting the Association, matters that relate to the formation of contracts with third parties, personnel matters, or other matters where executive sessions are authorized by law.
- (b) The nature of business to be considered in executive sessions must first be announced in open session.
- (c) Any matter discussed in executive session shall be generally noted in the Minutes of the Board.
- (d) In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member in question shall be entitled to attend the executive session.

5.14 **Nominations of Candidates for the Board.**

Procedures for nominations for election to the Board shall comply with Corporation Code Section 7520.

5.15 **Committees.**

The Board may create committees to serve at the pleasure of the Board. Such committees shall be created only by resolution adopted by a majority of the Directors then in office, provided that a Quorum is present.

## ARTICLE VI

### Officers

#### 6.01 Enumeration of Officers.

- (a) The Association will have the following officers:
  - (1) A President;
  - (2) A Vice President;
  - (3) A Secretary; and
  - (4) A Treasurer.
- (b) Except for the Secretary and/or Treasurer, officers must be Directors.
- (c) One person may hold two or more offices, except those of President and Secretary.

#### 6.02 Election of Officers.

At the initial meeting of the Board, officers shall be elected to serve until the next regular annual organizational meeting of the Board to take place after the next election of Directors by Members.

#### 6.03 Removal and Resignation.

- (a) An officer may be removed by the Board whenever the Board determines that such a removal would be in the best interest of the Association.
- (b) An officer may resign at any time.

#### 6.04 Vacancies.

An officer vacancy may be filled for the remainder of the term as prescribed in these Bylaws for regular election or appointment to office.

#### 6.05 President.

The President is the principal executive officer of the Association, with the following duties and powers:

- (a) Generally supervise all of the Association's business and affairs;
- (b) Preside at all meetings of the members and of the Board; and
- (c) Perform all general duties incident to the office of President prescribed by the Board.

6.06 **Vice President.**

The Vice President will perform the following duties:

- (a) The duties of the President, if the President is absent, unable or unwilling to act; and
- (b) Other duties assigned by the President or the Board.

6.07 **Treasurer.**

The Treasurer is the chief financial officer of the Association, with the following duties and powers:

- (a) Ensure that adequate and correct accounts of Association properties and business transactions are kept and maintained;
- (b) Send financial statements and reports to Association Members as required;
- (c) Have custody and responsibility for all Association funds and securities;
- (d) Receive all monies payable to the Association and give appropriate receipts;
- (e) Deposit all monies in the name of the Association in banks or depositories selected in accordance with these Bylaws; and
- (f) Perform all general duties incident to the office of Treasurer assigned by the President or the Board.

6.08 **Secretary.**

The Secretary will perform the following duties:

- (a) Ensure that the minutes of Member, Board and Committee meetings are kept in books for that purpose;
- (b) Ensure that all notices are given as required;

- (c) Have custody of the Association's records; and
- (d) Perform all duties assigned by the President or by the Board.

## **ARTICLE VII**

### **Indemnification and Liability**

#### **7.01 Liability of the Board and Officers.**

Board Members and Association officers are not liable if they perform their duties in conformance with Corporations Code Sections 7231 and 7231.5, and Civil Code Section 1365.7.

#### **7.02 Indemnification of Agents.**

The Association shall indemnify any present or former director, officer, employee or other agent of the Association to the fullest extent authorized under California Corporations Code Section 7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to indemnification under this provision.

## **ARTICLE VIII**

### **Miscellaneous**

#### **8.01 Checks, Drafts, etc.**

All checks, drafts and other orders for payment, or evidence of indebtedness regarding the Association must be signed by such person(s) as the Board may authorize. Notwithstanding the foregoing, any withdrawal of funds from the reserve accounts shall require the signature of two (2) Directors.

#### **8.02 Conflicts.**

- (a) In case of conflict between the Declaration and these Bylaws, the Declaration will control.

- (b) In case of conflict between these Bylaws and any applicable State of California law or statute, the law or statute will control.

8.03 Notices.

Unless otherwise specified, giving of all notices shall conform with the provision specified for notices in the Declaration.

**ARTICLE IX**

**Amendments**

- (a) The Association may amend these Bylaws as follows:
- (1) Before the first Condominium is sold, Declarant may unilaterally amend these Bylaws.
  - (2) After the First Sale of a Condominium.
    - (A) If there is only one membership class, approval by a majority of the total voting power of the Association and a majority of votes other than the Declarant; or
    - (B) If Class B membership exists, approval by a majority of the total voting power of each class of membership.
- (b) Amendment of the Bylaws requires that it be signed by two officers certifying that it has been approved by the required vote.
- (c) The specified percentage of members necessary to amend a specific section or provision of these Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that section or provision.
- (d) If a first mortgagee who receives a written request from the Board to approve a proposed amendment(s) does not return a negative response within thirty (30) days, the first mortgagee will be deemed to be in approval of the amendment(s).
- (e) Prior written approval of beneficiaries of at least fifty-one (51%) of all first Mortgages on Condominiums must be secured before any amendment to the provisions of these Bylaws affecting the Section in the Declaration entitled "Restrictions on Certain Changes" may take effect, and this sentence may not be amended without such prior written approval.

I, **THE UNDERSIGNED SECRETARY**, certify that the foregoing Bylaws have been approved by a majority of the members of the Association.

X   
By: \_\_\_\_\_  
**ASSOCIATION SECRETARY**

**END**

RECORDING REQUESTED BY:

Recorded in the County of Orange, California  
Gary L. Granville, Clerk/Recorder



204.00

AND WHEN RECORDED MAIL TO:

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Law Offices of Timothy Murakami  
11755 Wilshire Blvd., Suite 1400  
Los Angeles, California 90025

Tel: (310)477-5455 Fax: (310)477-4077

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**SUPERSEDING DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS**

**FOR**

**NEWLAND PARK CONDOMINIUMS - TRACT NO. 14101**

(A Condominium Project)

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[C-Single - 03/20/98]  
[This Set: 10/05/98]

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**EXECUTION PAGE**

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1354, 1365, 1365.5, 1365.7, 1365.9, 1366, 1368, 1368.4 and 1375

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**SUPERSEDING DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR  
NEWLAND PARK CONDOMINIUMS**

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**THIS SUPERSEDING DECLARATION** is dated this 20th day of October, 1998, (for reference purposes) by **NEWLAND PARK APARTMENTS**, a California Limited Partnership, ("Declarant").

**RECITALS:**

- A. Declarant is the owner in fee of that certain real property ("Property") in the City of Garden Grove, County of Orange, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a Condominium project ("Project") under the provisions of California Civil Code Section 1351(f).
- C. The Declaration of Covenants, Conditions and Restrictions covering said property ("Original Declaration") was recorded on November 02, 1993, Instrument No. 93-0750143, in the Office of the County Recorder of Orange County, State of California.
- D. Declarant declares that the Original Declaration is hereby terminated, rescinded and canceled in all respects and that the Original Declaration be of no further force and effect and all rights, duties and obligations which may exist or may arise by virtue of the Original Declaration shall terminate and be superseded by this Superseding Declaration of Covenants, Conditions, Restrictions and Easements for Newland Park Condominiums.
- E. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

**NOW, THEREFORE,** Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

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## ARTICLE I

### DEFINITIONS

The following definitions apply unless otherwise required by the context:

**"Alternative Dispute Resolution" ("ADR")** - Non-judicial (non-court) procedure to resolve disputes. Such procedures include Mediation, Binding Arbitration and Non-binding Arbitration. All three types of procedures (set forth below) are conducted by a neutral third party, such as an arbitrator or a retired judge.

- (a) **"Mediation"** is an informal settlement procedure aided by a neutral third party.
- (b) **"Binding Arbitration"** is a formal non-judicial procedure wherein the parties have agreed that any decision or award rendered by the arbitrator may be entered as an enforceable judgment by any party in a court having jurisdiction. The decision or award rendered in Binding Arbitration is final.
- (c) **"Non-binding Arbitration"** is a formal non-judicial procedure wherein after an award or decision by arbitration, the matter may be heard and decided anew by a court of law having jurisdiction.

**"Approval"** - Prior written approval.

**"Articles"** - The Articles of Incorporation of the Association, including any amendments.

**"Assessments"** - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

**"Association"** - Newland Park Condominium Association, a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

**"Beneficiary"** - The lender on the security of a Promissory Note and Deed of Trust.

**"Board" or "Board of Directors"** - The Board of Directors of the Association.

**"Bylaws"** - The Bylaws of the Association, including any amendments.

**"Code Section"** - Any reference to "Code Section" (e.g. "Civil Code", "Vehicle Code") refers to Codes of the State of California. Reference to any specific Code Section shall include any future successor Code Sections.

**"Common Area(s)"** - The entire Property (including structures, land and improvements) other than the Units described in this Declaration and the Condominium Plan.

**"Common Expenses"** - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

**"Compliance Assessment"** - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Condominium"** - An estate in real property (defined in Sections 783 and 1351(f) of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area.

**"Condominium Plan"** - The recorded diagrammatic drawings of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 1351(e).

**"Declarant"** - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

**"Declaration"** - This instrument and any amendments.

**"Deed of Trust"** - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

**"DRE"** - The California Department of Real Estate and any successors thereto.

**"Eligible First Mortgagees"** - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

**"Exclusive Use Common Area"** - Those portions of the Common Area designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

**"FHA"** - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

**"FHLMC"** - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

**"First Mortgage" or "First Mortgagee"** - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

**"First Sale"** - The date on which the first deed is recorded conveying fee title to a Condominium to the first buyer pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

**"FNMA"** - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

**"Governing Documents"** - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan and any Rules and Regulations.

**"GNMA"** - The Government National Mortgage Association administered by the United States Dept. of Housing and Urban Development, and any successors to such association.

**"Grant Deed"** - A written instrument transferring title to real property.

**"Institutional Mortgagee"** - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Condominium.

**"Manager" or "Managing Agent"** - The person(s), firm or corporation contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association as provided for in this Declaration.

**"Member"** - Any person who is an Owner based upon the provisions of the Governing Documents.

**"Mortgage"** - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

**"Mortgagee"** - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

**"Mortgagor"** - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

**"Notice and a Hearing"** - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

**"Occupant"** - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

**"Owner" or "Owners"** - The person(s) or legal entity holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser(s) of a Condominium under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Condominium merely as security for the performance of an obligation.

**"Person"** - A person, partnership, corporation, trustee or other legal entity.

**"Project" or "Property"** - The real property described in Paragraph "A" of the Recitals to this Declaration. The Project is a "Condominium Project" as defined in Section 1351(f) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

**"Quorum"** - Members entitled to vote (in person or by proxy) holding a majority of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

**"Regular Assessments"** - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

**"Rules and Regulations"** - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

**"Special Assessments"** - Assessments levied on an as-needed basis to meet expenses of an extraordinary or capital nature.

**"Total Voting Power"** - One hundred percent (100%) of the votes by Association Members which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

**"Trustor"** - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

**"Unit"** - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 1351(f). Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified.

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

## ARTICLE II

### DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY

Ownership of each Condominium shall include a Unit, an undivided interest in the Common Area (or a portion of it), membership in the Association, and any Exclusive Use Common Area(s) appurtenant to such Unit.

#### 2.01 Units.

Each Unit consists of all elements and areas identified as such on the Condominium Plan.

#### 2.02 Common Area(s).

- (a) The Property not constituting the Units is the Common Area.
- (b) Each Owner of a Condominium in the Property will receive the following undivided interest in the Common Area in the Property: **one/fourteenth (1/14).**

#### 2.03 Exclusive Use Common Area(s).

- (a) As set forth in Civil Code Section 1351(i), "Exclusive Use Common Area(s)" are portions of the Common Area(s) for the exclusive use of the Owner(s) of the Unit to which the Exclusive Use Common Area is appurtenant.
- (b) As set forth in Civil Code Section 1351(i)(2), internal and external telephone wiring designed to serve a particular Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit, whether or not they are designated and shown as such on the Condominium Plan.
- (c) Use of the Exclusive Use Common Area(s) are subject to reasonable restrictions contained in any Governing Documents.
- (d) Portions of the Common Area(s) designed to serve a particular Unit but located outside the boundaries of the Unit, are Exclusive Use Common Areas as set forth in Civil Code Section 1351(i)(1), if not shown and designated as such on the Condominium Plan.
- (e) As shown and designated on the Condominium Plan, the Declarant hereby reserves the following Exclusive Use Common Areas for the exclusive use of the appurtenant Unit: **garage areas.**

**2.04 Repair and Maintenance of the Property by Owner.**

- (a) In accordance with the Governing Documents, each Owner must maintain and repair all of the following, except as otherwise specifically stated herein:
- (1) All of the Owner's Unit (see the Condominium Plan for a detailed description) in a clean, sanitary and attractive condition, including the following within the Unit's boundaries:
    - (A) Utility fixtures and equipment;
    - (B) Plumbing fixtures and pipes; and
    - (C) Electrical fixtures.
  - (2) The Unit's Exclusive Use Common Area(s), as shown and designated on the Condominium Plan, if any, in a clean, sanitary and attractive condition;
  - (3) The following, whether located within or outside the Unit, that solely and exclusively serves the Unit:
    - (A) Air conditioning and heating equipment;
    - (B) Hot water heaters.
  - (4) Windows, window frames, balcony doors, balcony door frames, and patio doors and patio door frames; and
  - (5) Any damage to any real or personal property in the Project caused by the negligence of an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.
- (b) Except as otherwise provided herein, each Owner has the exclusive right to paint, wallpaper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, and doors within the Unit (including furniture and furnishings), without prior approval of the Board.
- (c) An Owner shall notify the Association of any substantial improvements to the Unit and Exclusive Use Common Area(s), if any, in consideration of any affect of such improvements on the Association's insurance policy.
- (d) Any change to the exterior appearance of a Unit must be approved by the Board in accordance with the Governing Documents and applicable laws.

(e) Subject to this Declaration and California Civil Code Section 1360, an Owner may do the following:

(1) Make any improvement or alteration within the Unit and its Exclusive Use Common Area (if any) that does not impair the structural integrity or mechanical systems, or lessen the support of any portion of the Property.

(2) Modify a Unit and its Exclusive Use Common Area (if any) to eliminate hazards and facilitate access for disabled persons (including the route from the public way to the Unit door) subject to the following conditions:

(A) The modifications must be consistent with applicable building code requirements.

(B) The modifications must be consistent with applicable provisions of the Governing Documents regarding safety and aesthetics.

(C) External modifications to the Unit or its Exclusive Use Common Area may not prevent reasonable passage by other Owners, and must be removed by the Owner when the Unit is no longer occupied by the person(s) requiring the modifications.

(D) Plans and specifications must be submitted to the Board for review to determine compliance with the provisions of this paragraph.

(E) The Board may not deny approval of the proposed modifications without good cause.

(f) An Owner may not do anything that unreasonably increases the level of noise emanating from within the Unit without obtaining the approval of the Board. If an Owner does anything within the Unit that may increase the level of noise or sound that can be heard outside the Unit during normal use and occupancy of the Unit (for example, replacing carpeting with tile or other hard surface), the Owner must first obtain approval from the Board, and upon approval, take all reasonable measures (at own expense) to deaden, insulate or otherwise decrease the level of such noise to the minimum level reasonably possible.

#### 2.05 Repair and Maintenance of the Property by Association.

Except as otherwise specifically stated, the Association (not individual Owners) is responsible for maintaining, repairing, modifying, and altering Common Areas (not including Exclusive Use Common Areas), including bearing walls (except for the finished surfaces thereof), plumbing and pipes in Common Area walls, exterior doors and related hardware, exterior door frames, finished surfaces and structural components of balconies, balcony railings, patios, storage spaces, parking spaces in common garages and shower drainage pans.

2.06 Association Insurance.

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is reasonably prudent to do so:
- (1) Fire insurance for one hundred percent (100%) of the full insurable value of all dwelling structures and all improvements in the Common Area(s), with a guarantee that the improvements are replaced without deduction for depreciation or coinsurance naming as insured the Owners, their Mortgagees, and/or the Association.
  - (2) Extended coverage for replacement costs of damage to the Common Area(s) that arises out of vandalism or malicious mischief.
  - (3) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9 (see Exhibit "B") and the notification requirements of Section 1365.9.
  - (4) If available, an extended coverage endorsement clause known as "special form".
  - (5) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
  - (6) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Condominiums and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit.
  - (7) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas).
  - (8) If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.

- (b) The Board may elect to adopt an insurance policy with extended fire insurance coverage including any of the following types of property contained within a Unit: fixtures, improvements and alterations that are a part of the building or structure; and appliances, such as those used for refrigeration, ventilating, cooking, dishwashing, laundering, security or housekeeping, as long as the improvements are replaced without deduction for depreciation or coinsurance naming as insureds the Owners, their Mortgagees, and/or the Association.
- (c) Association insurance policies must contain the following provisions, ("Special Condominium Endorsements") as appropriate and if available:
- (1) Inflation Guard Endorsement, if obtainable at a reasonable cost; and
  - (2) Standard Mortgage clause and name Mortgagee, holder of First Mortgage, FNMA or servicers (if applicable), or Mortgagees under any first deeds of trust, as their interests may appear.
- (d) All fire insurance proceeds payable for losses to real property and improvements, and all casualty insurance proceeds, may be paid to a Trustee, to be held and expended for the benefit of the Owners, the Association, Mortgagees, and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.
- (e) The Board shall consider including in the Association policy, coverage for flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
- (f) The Board shall consider including in the Association policy coverage for earthquake insurance.
- (g) Insurance and fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice, and to First Mortgagee.
- (h) At least annually, the Board must review the Association's insurance policies.
- (i) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of improvements on the Property, including foundations and footings, without deduction for depreciation.

2.07 **Owner Insurance.**

- (a) It is each Owner's responsibility, if desired, to obtain insurance for the following:
- (1) Insurance for the personal property or potential liability occurring within a Unit;
  - (2) Loss assessment coverage for certain future special assessments; and
  - (3) Any other available insurance.
- (b) An Owner shall not obtain any insurance that potentially may cause a reduction in the Association's insurance proceeds. If an Owner violates this provision, the Owner shall be liable to the Association for any reduction in the Association's insurance proceeds.
- (c) An Owner shall consider including in the policy coverage for earthquake insurance.
- (d) An Owner shall notify the Association of any substantial improvements to the Unit and Exclusive Use Common Area(s), if any. If an Owner fails to do so, the Owner is liable to the Association for any damages pertaining to the Association's insurance coverage, if any, including any reduction in coverage. The Owner shall also alter the coverage in the Owner's individual insurance policy accordingly.

## ARTICLE III

### OWNERS GENERAL USE RESTRICTIONS

#### 3.01 Unit Use.

- (a) Each Unit shall be used solely as a private residential dwelling and for no other purpose.
- (b) An Owner may rent a Unit for residential purposes provided:
  - (1) There is a written agreement;
  - (2) The rental term is longer than thirty (30) days;
  - (3) The lease states it is subject to all the provisions of the Governing Documents;
  - (4) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates; and
  - (5) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights pursuant to the Article entitled "Easements" herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Unit.

#### 3.02 Common Area Use.

- (a) Common Area(s) and Exclusive Use Common Area(s), if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.

- (b) Any Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Condominium, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

**3.03 Nuisances.**

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.

**3.04 Debris, Trash and Refuse.**

Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s).

**3.05 Signs.**

- (a) For up to five (5) years from the First Sale in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.

**3.06 Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

**3.07 Parking / Vehicle Code Regulations.**

All applicable provisions of the California Vehicle Code Section 22658.2 (regarding illegally parked cars) shall be enforced.

**3.08 Animal Regulations.**

- (a) A maximum of two (2) domesticated cats or dogs may be kept in a Unit, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs, chirping birds, or noisy aquarium filters) may not be kept on the Property or in a Unit.
- (d) An animal may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (e) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up.
- (f) The Board shall determine whether specific pets are a nuisance and should be removed from any Unit.
- (g) Each Owner shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.

## ARTICLE IV

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

#### 4.01 Membership.

Every Owner is automatically an Association Member.

#### 4.02 Membership Classes.

- (a) The Association has two (2) classes of voting membership:
- (1) Class A Members - All Owners (other than Declarant).
  - (2) Class B Member - Declarant, entitled to three (3) votes for each Condominium owned by Declarant.
- (b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:
- (1) The total outstanding votes held by Class A Membership equals the total outstanding votes held by Class B Membership (tripled); or
  - (2) Two (2) years after the First Sale of a Condominium in the Project.

#### 4.03 Voting Rights and Requirements.

- (a) Voting rights shall commence for each Condominium within the Project when Assessments against the Condominium have been levied by the Association.
- (1) Each Co-Owner has an indivisible interest in a single Membership.
  - (2) Each Condominium is entitled to one (1) vote.
  - (3) If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
  - (4) If a Co-Owner casts a vote representing a certain Condominium, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Condominium.

- (b) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent in the payment of Assessments.
- (c) If Membership approval of a prescribed majority of the voting power (other than Declarant) is required, the following rules apply:
  - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
  - (2) After conversion to all Class A memberships, the required vote is a bare majority of the Total Voting Power of the Association, and the prescribed majority of the Total Voting Power of Members other than Declarant.
- (d) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).
- (c) With the exception of the provisions of the Article herein entitled "Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements", no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which Declarant owns.

**4.04 Transfer of Membership.**

- (a) Membership of each Owner shall be appurtenant to the Condominium owned, and may only be (and is automatically) transferred upon conveyance of title to a Condominium to the new Owner.
- (b) In connection with any transfer or change of ownership of any Condominium, the Association and each Owner must comply with Civil Code Section 1368.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

#### 5.01 Commencement of Duties.

The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences upon First Sale of a Condominium.

#### 5.02 Specific Association Duties and Powers.

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for the Common Areas (not including Exclusive Use Common Areas), facilities, and interests, or for the Association subject to the limitations set forth below.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.

#### 5.03 Board Powers and Limitations.

- (a) Except as to matters requiring the approval of Owners, the affairs of the Association shall be managed and conducted by the Board and the Association's officers consistent with the law.
- (b) The Board is authorized to adopt and enforce reasonable Rules and Regulations not inconsistent with the Declaration concerning the Property.

- (c) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:
- (1) Enforcement of the Governing Documents;
  - (2) Damage to the Common Area(s);
  - (3) Damage to the separate interests which the Association is obligated to maintain or repair; or
  - (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.
- (d) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:
- (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
    - (A) A management contract with terms approved by the FHA or VA;
    - (B) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
    - (C) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
    - (D) Lease agreements for laundry room fixtures and equipment not to exceed five years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);
    - (E) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%); and

- (F) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%).
- (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (4) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

**5.04 Budget, Financial Statements and Governing Documents.**

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 1365 and 1365.5 (current Sections set forth in Exhibit "B"), or successor statutes pertaining to financial records, governing documents, etc.
- (b) In addition to the requirements of California Civil Code Sections 1365 and 1365.5, the Association shall make the following documents available for inspection and copying by a Member or the Member's duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
  - (1) Current copies of all Governing Documents, books, records, and financial statements of the Association for lenders, holders, insurers and guarantors of a First Mortgage on any Condominium; and
  - (2) Copies of relevant California Code Sections referenced in any Governing Documents.
- (c) Association Members shall annually be provided a summary of the provisions of Section 1354, as set forth therein (current Section set forth in Exhibit "B"), which must include the following language: "Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents." This summary shall be provided either at the time to pro forma budget required by Section 1365 is distributed, or in the manner specified in Section 5016 of the Corporations Code.

- (d) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce any requested documents.

**5.05 Penalties for Non-Compliance.**

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
- (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
  - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
  - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area facilities for as long as the violation continues; and
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
  - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
  - (3) The Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
  - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner;
  - (5) The Board shall meet in executive session if requested by the Owner being disciplined, and the Owner shall be entitled to attend the executive session.
  - (6) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.

- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

**5.06 Right of Entry.**

- (a) The Association has the right to enter any Unit or Exclusive Use Common Area(s) to determine compliance with the Governing Documents and to perform its duties.
- (b) In case of emergency, or by Court order, a Unit may be entered immediately. Otherwise, a Unit or its Exclusive use Common Area(s) may only be entered at reasonable hours after the Owner has received three (3) days notice, and if the entry will not result in a breach of the peace.
- (c) Entry must be made with as little inconvenience as possible to the Owner/Occupant.

**5.07 Unsegregated Real Property Taxes.**

- (a) The Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property that are not assessed to or paid by the Owners.
- (b) If all the Condominiums are taxed under a blanket tax bill covering the entire Project, each Owner shall pay their proportionate share of any installment to the Association at least ten (10) days prior to the delinquency date.

## ARTICLE VI

### COVENANTS FOR ASSESSMENT

#### 6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Condominium does remain subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

#### 6.02 Commencement: Due Dates of Assessments.

- (a) Regular Assessments for all Condominiums in the Project commence on the first day of the month following the First Sale within the Project.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

#### 6.03 Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Condominiums, except as otherwise provided.
- (b) Each subject Condominium is liable for a pro rata share (the fractional number one (1) over the total number of Condominiums subject to Assessment by the Association at that time).

6.04 **Assessment Duties of the Board of Directors.**

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366 (current Section set forth in Exhibit "B").
- (b) The Board must establish separate bank accounts for operating monies and reserve monies.

6.05 **Effect of Nonpayment of Assessments:  
Delinquency and Remedies of the Association.**

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
    - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
    - (2) Reasonable collection costs and attorney's fees; and
    - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
  - (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.
  - (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Owner was allegedly responsible or in bringing the Owner and his/her Unit into compliance with the Governing Documents, may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions
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## ARTICLE VIII

### MORTGAGEE PROTECTION

#### 8.01 Subordination of Lien and Foreclosure.

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
- (1) Is subject and subordinate to the rights of any First Mortgage that encumbers any part of the Property made for value in good faith; and
  - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
- (b) No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
- (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien); and
  - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Condominium is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

#### 8.02 Mortgagees Are Not Required to Cure Certain Breaches.

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

**8.03 Effect of Breach of Declaration.**

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

**8.04 Exemption From Right of First Refusal.**

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Condominium, unless a Mortgagee of the Property grants written consent to the Association.
- (b) Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other party) may not impair the rights of a First Mortgagee to do any of the following:
- (1) Foreclose or take title to a Condominium, pursuant to the remedies provided in the Mortgage;
  - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
  - (3) Sell or lease a Condominium acquired by the Mortgagee.

**8.05 Restrictions on Certain Changes.**

- (a) At least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:
- (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Common Area (other than granting easements as specified in this Declaration);
  - (2) Alter the method of determining Assessments or other charges levied against an Owner;
  - (3) Partition or subdivide any Condominium;
  - (4) Seek to abandon or terminate the Property (except as provided by statute in case of substantial loss to the Units or Common Areas);

- (5) Use hazard insurance proceeds for losses to the Property (Unit or Common Area) for other than repair, replacement or reconstruction of the relevant Property (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (6) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area(s).
- (7) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
- (8) Amend the Governing Documents concerning:
  - (A) Voting rights;
  - (B) Rights to use the Common Area(s), and reallocation of interests in the Common Area (including Exclusive Use Common Areas);
  - (C) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
  - (D) Unit boundaries;
  - (E) Owners' interests in the Common Area;
  - (F) Convertibility of Common Area into Units or Units into Common Area;
  - (G) Unit leasing;
  - (H) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a First Mortgagee;
  - (I) Annexation or deannexation of real property;
  - (J) Assessments, Assessment liens, or the subordination of such liens;
  - (K) Casualty and liability insurance (or other insurance or fidelity bonds);
  - (L) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Condominium;
  - (M) Restoration or repair of the Property after hazard damage or partial condemnation;

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- (N) Action to terminate the legal status of the Property after substantial destruction or condemnation; and
  - (O) Any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages.
- (9) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.
- (b) When Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, written approval of sixty-seven percent (67%) of Eligible First Mortgagees must be given.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested.

**8.06 Inspection of Association Books and Records.**

Any First Mortgage holder has the right to examine the books and records of the Association.

**8.07 Condemnation Awards and Insurance Proceeds.**

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected First Mortgagee, naming the Mortgagees as their interests may appear.

**8.08 Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

**8.09 Payments by Mortgagees.**

- (a) First Mortgagees may pay the following jointly or severally:
- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
  - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:
- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
  - (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

**8.10 Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Condominiums.

**8.11 Notices to Mortgagees.**

- (a) Each Eligible First Mortgage Holder is entitled to timely written notice of:
- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its Mortgage;
  - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Condominium on which it holds the Mortgage;
  - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.
- (b) To obtain the information above, the Mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the Condominium number or address of the Condominium for which it has the Mortgage.

**8.12 Governmental Financing Programs.**

- (a) It is the intent that the Governing Documents and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Condominium in the Project by the Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association. The Association and each Owner shall promptly take any action and/or shall adopt any resolutions required by the Association or any Mortgagee to conform this Declaration or the Project to the requirements of any of these entities or agencies. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed the Association as its Attorney-in-Fact, for itself and each of its Mortgagees, heirs, legal representatives, successors and assignees, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to the Association as its Attorney-in-Fact for the purpose of amending the Governing Documents to conform with any new requirements. This Power of Attorney shall expire two years after the recording of this Declaration.
- (b) These steps include the requirement that, when available, the Association must maintain certain types of insurance coverage issued by carriers who meet the requirements of the relevant governmental financing program.
- (c) Hazard insurance policies required by this Section must contain (or attach) the standard Mortgagee clause commonly accepted by private Institutional Mortgage investors for similar properties in the locale (except when a separate policy covering the Common Area(s) is maintained).
- (d) If there are any such loans, the Association will give written notice to FHLMC (or its designated representative) of the following:
  - (1) Any loss to the Common Area in excess of Ten Thousand Dollars (\$10,000.00); or
  - (2) Damage to a Condominium covered by a First Mortgage purchased (in whole or in part) by the FHLMC in excess of One Thousand Dollars (\$1,000.00).

## ARTICLE IX

### DESTRUCTION OF IMPROVEMENTS

#### 9.01 Restoration of the Property.

If there is damage to or destruction of any improvements on the Property for which the Association is responsible:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of restoration costs, the Association shall cause Common Area damage to be repaired unless sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power elect not to reinvestment or repair.
- (b) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs, then the vote (or written assent) of sixty-six and two-thirds percent (66 2/3%) of the Owners and First Mortgagees must approve proceeding with restoration. A Special Assessment shall be levied by the Board against each Condominium, to pay for the difference between insurance proceeds and the actual costs.
- (c) If the estimated cost of repair does not exceed ten thousand dollars (\$10,000.00), the Board must cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

#### 9.02 Sale of Property and Right to Partition.

If the Association elects not to rebuild, an independent M.A.I. (Member Appraisal Institute) appraiser (or an appraiser of comparable experience) shall determine the relative fair market values of all condominiums as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

#### 9.03 Notice to Owners and Listed Mortgagees.

Immediately upon learning of any material damage or destruction to the Common Property or any Unit, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

**ARTICLE X**  
**CONDEMNATION**

**10.01 Representation by the Board in Condemnation Proceedings.**

In case any portion of the Common Area is taken by condemnation or sale by eminent domain, the Board will be the representative of all Owners in any action to recover awards and all aspects of condemnation proceedings.

**10.02 Distribution of Award.**

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be applied toward payment of any balance due on any Mortgages of record, in order of priority.
- (c) If condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an independent M.A.I. appraiser(s) hired by the Board and approved by fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve, then any Mortgagee may hire an M.A.I. appraiser at their own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) The determination of the appraiser(s) of each Condominium's value and degree of affect by the proceedings will be final and binding on all Owners and Mortgagees.

ARTICLE XI

COVENANT AGAINST PARTITION AND RESTRICTION  
ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST

11.01 No Partition; Exceptions: Power of Attorney.

- (a) Upon prior written approval of the First Mortgagee, an Owner may bring an action for partition by sale as provided in California Civil Code Section 1359 (or any similar statute in effect at the time).
- (b) These provisions do not prevent a judicial partition between co-tenants of a Condominium.
- (c) Subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all Institutional First Mortgagees, the Association (through its Board) has irrevocable power of attorney for the following circumstances:
  - (1) To sell the Property for the benefit of Owners and Mortgagees when partition takes place under California Civil Code Section 1359;
  - (2) Only after a certificate executed by a majority of Board Members is recorded which states that power of attorney is duly exercisable under the circumstances.

11.02 Proceeds of Partition Sale.

- (a) Whenever an action is brought for partition by sale, the Owners will share the proceeds in the same proportion as the relative values of each Condominium, determined by comparing its fair market value on partition date (established by an M.A.I. Appraiser selected by the Association) to the fair market value of all Condominiums in the Property on that date.
- (b) If applicable, distribution of partition sale proceeds must be adjusted to reflect prior condemnation awards or insurance proceeds paid to Owners and Mortgagees.

11.03 No Separate Conveyance of Condominium Components.

- (a) An Owner may not sever, sell, convey or encumber a Condominium's component interests (such as the undivided interest in the Common Area from the Unit).
- (b) The provisions of this Section terminate when a partition is decreed (either judicial or in accordance with this Article).

## ARTICLE XII

### EASEMENTS

#### 12.01 Certain Rights and Easements Reserved to Declarant.

For up to five (5) years from the date of the First Sale in the Project (and without unreasonably interfering with other Owners) the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:

- (a) To complete excavation, alteration, grading and construction of improvements;
- (b) To construct, alter or make additional improvements Declarant deems advisable in the course of Property development;
- (c) To use any Unit owned by Declarant as an office for construction, decoration, real estate sales and leasing; and
- (d) To make reasonable use of any Common Areas for ingress, egress, development, sales and construction purposes.

#### 12.02 Certain Easements for Owners.

Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area (except Exclusive Use Common Areas) to all Owners, subject to Governing Documents.

#### 12.03 Certain Easements for Association.

Declarant grants to the Association nonexclusive easements over the Common Areas and Units as reasonably necessary to discharge its obligations as described in this Declaration.

#### 12.04 Encroachment.

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Unit or Common Area, originally constructed by Declarant, or as reconstructed in substantial conformance with the Condominium Plan, with improvements encroaching on, over and across any portion of a contiguous Unit or Common Area, as shown in the Condominium Plan, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.

- (b) If a portion of a Unit encroaches on, over and across any portion of a contiguous Unit or Common Area, the encroaching Unit Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Unit, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of Unit(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.

**12.05 Creation of Easements.**

- (a) Easements referred to herein are established upon the First Sale in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Condominiums and Property superior to all other encumbrances.
- (b) Individual grant deeds to Condominiums shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

**12.06 Utility Easements.**

The Association may grant easements and rights of way through the Common Area(s) and Units for water, sewer, telephone and cable lines, storm drains, underground conduits, sprinkler systems, and other purposes intended to maintain the health, safety, convenience and enjoyment of the Units and Common Area(s).

**ARTICLE XIII**  
**SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF**  
**DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA**  
**IMPROVEMENTS**

**13.01 Special Provisions Relating to Enforcement of Declarant's**  
**Obligation to Complete Common Area Improvements.**

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if the following factors apply:
  - (1) Declarant has not completed Common Area improvements before the First Sale;
  - (2) The Association is the obligee under a bond or other arrangement securing completion; and
  - (3) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area completion.
- (c) If a notice of completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Association Members may submit a petition signed by at least five percent (5%) of Association voting power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Association Members (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

## ARTICLE XIV

### AMENDMENT

#### 14.01 Amendment.

- (a) Before the First Sale, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "Mortgagee Protection") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Sale, this Declaration may only be amended in the following ways (and subject to the Article entitled "Mortgagee Protection"):
  - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
  - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration or other Governing Documents which specifically benefit the Declarant as Developer, shall be made without the written consent of the Declarant.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

#### 15.01 Enforcement: Resolution of Disputes.

- (a) An Owner or the Association may enforce by legal action any restrictions, conditions, covenants, reservations, liens, Assessments, fees and penalties imposed by this Declaration or other Governing Documents for violations committed by any offending party, or with respect to any dispute related to any portion of any property covered by the Declaration.
- (b) Failure to take action does not constitute a waiver of the right to take action.
- (c) Reference is hereby made to California Civil Code Section 1354 (current Section set forth in Exhibit "B"), which sets forth pre-filing requirements, or arbitration proceedings and other procedures for certain types of enforcement actions.
- (d) In case of any potential disputes or claims against any contractor, builder of the Project, or the Declarant, the Association and/or Owners must comply with California Civil Code Sections 1368.4 and 1375.
- (e) Any controversy, breach or dispute arising out of this Declaration or the condition of the Property (including, without limitation, any dispute between Declarant and any Owner arising over the design, specifications, surveying, planning, supervision, testing or observation of construction or construction of an improvement to, or survey of, the Property), shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, §§638-645.1, inclusive.
- (f) The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Declaration.
- (g) The parties agree that the referee shall have the power to decide all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy. The referee shall not have the power to award punitive damages.

- (h) The parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon a referee within ten (10) days of a written request to do so by any party, then any party may seek to have a referee appointed pursuant to the California Code of Civil Procedure §§638 and 640.
- (i) The cost of such proceeding shall be borne equally by the parties to the dispute.
- (j) Notwithstanding any other provision of this Declaration, this Section shall not be amended without the consent of Declarant.

#### 15.02 Disclosures.

Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Units, heating, ventilation air conditioning systems, plumbing, Common Area(s), garages, etc.

#### 15.03 Term of Declaration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Condominiums record a signed, written instrument:
  - (1) At least one (1) year before the beginning of any ten (10) year period; and
  - (2) Agreeing to change or terminate this Declaration.

#### 15.04 Notices.

Any required notice must be given in writing by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);

- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

15.05 Partial Invalidity.

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

15.06 Number.

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

15.07 Attorneys' Fees.

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 14101 on the day and year first written above.

**DECLARANT:**

**NEWLAND PARK APARTMENTS,  
a California Limited Partnership**

By:  
its:

X WRK  
By:  
its:

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles ) ss.

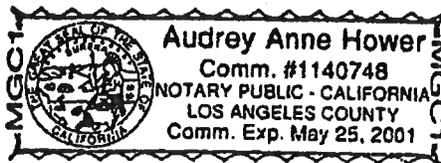
On October 20, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared:

William Rance King, Jr

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

WITNESS my hand and official seal.

(SEAL)

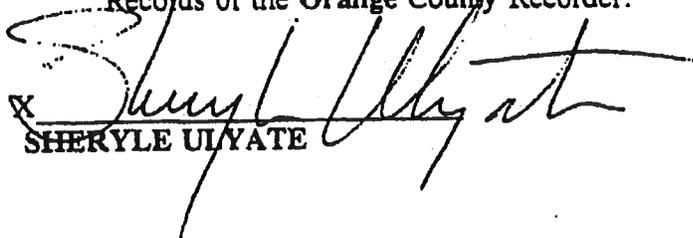


Audrey Anne Hower  
Notary Public

**SUBORDINATION BY LIENHOLDER**

**SHERYLE ULYATE, an unmarried woman, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 14101 to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration of Covenants, Conditions, Restrictions and Easements, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.**

Deed of Trust recorded on April 11, 1991 as Instrument No. 91-168561 and re-recorded July 17, 1991 as Instrument No. 91-373709, both of the Official Records of the Orange County Recorder.

X   
SHERYLE ULYATE

STATE OF CALIFORNIA )  
COUNTY OF Orange ) ss.

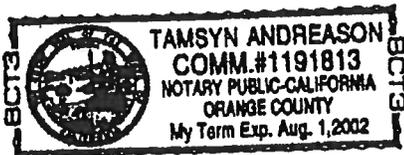
On December 22, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared:

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

WITNESS my hand and official seal.

(SEAL)

  
Notary Public



**SUBORDINATION BY LIENHOLDER**

WESTERN FINANCIAL BANK, successor-in-interest to Western Financial Savings Bank, a California corporation, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 14101 to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration of Covenants, Conditions, Restrictions and Easements, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on March 26, 1990 as Instrument No. 90-156094 of the Official Records of the Orange County Recorder.

WESTERN FINANCIAL BANK

X *Mark R. Rebal*  
By: MARK R. REBAL  
its: VICE PRESIDENT

X *James E. Tecca*  
By: JAMES E. TECCA  
its: EXECUTIVE VICE PRESIDENT

STATE OF CALIFORNIA )  
COUNTY OF Orange ) ss.

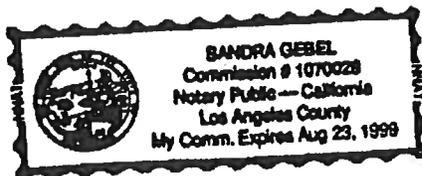
On January 8, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared:

MARK R. REBAL AND JAMES E. TECCA

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

WITNESS my hand and official seal.

(SEAL)



*Sandra Gebel*  
Notary Public

**EXHIBIT "A"**

**PROPERTY**

Lot 1 of Tract No. 14101, in the City of Garden Grove,  
as per Map recorded in Book 702, Pages 9 through 12,  
inclusive, of Miscellaneous Maps, in the Office of the  
County Recorder of Orange County.

**EXHIBIT "B"**

**CALIFORNIA CIVIL CODE SECTIONS**

**1354, 1365, 1365.5, 1365.7, 1365.9, 1366, 1367, 1368, 1368.4 and 1375**

**Current as of 01/98**

**[ Page 1 of 14 ]**

**§ 1354. Covenants and restrictions in declaration as equitable servitudes; enforcement**

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$ 5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a request for resolution. The request for resolution shall include:

- (1) A brief description of the dispute between the parties,
- (2) A request for alternative dispute resolution, and
- (3) A notice that the party receiving the request for resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the request for resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a request for resolution shall have 30 days following service of the request for resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the request for resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the request for resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$ 5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 Of the code of civil procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

**EXHIBIT "B"**

**CALIFORNIA CIVIL CODE SECTIONS**

Current as of 01/98

[ Page 2 of 14 ]

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a request for resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a request for resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this Section, which specifically references this Section. The summary shall include the following language:  
"Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the civil code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the corporations code.

(j) Any request for resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this Section.

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**§ 1365. Documents prepared and distributed by associations**

Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all its members the following documents:

- (a) A pro forma operating budget, which shall include all of the following:
  - (1) The estimated revenue and expenses on an accrual basis.
  - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:
    - (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
    - (B) As of the end of the fiscal year for which the study is prepared:

**EXHIBIT "B"**

**CALIFORNIA CIVIL CODE SECTIONS**

**Current as of 01/98**

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- (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
- (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
- (C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B).
- (3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.
- (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e)(1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practical, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the association receives renews any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

**EXHIBIT "B"**

**CALIFORNIA CIVIL CODE SECTIONS**

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(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

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**§ 1365.5. Board of directors; duties**

(a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

- (1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.
- (2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.
- (3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.
- (4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- (5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

- (c)(1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

EXHIBIT "B"

CALIFORNIA CIVIL CODE SECTIONS

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(c)(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

- (1) Identification of the major components which the association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.
- (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.
- (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.
- (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, "reserve accounts" means moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(g) As used in this section, "reserve account requirements" means the estimated funds which the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the association is obligated to maintain.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

EXHIBIT "B"

CALIFORNIA CIVIL CODE SECTIONS

Current as of 01/98

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§ 1365.7. Tortious act or omission of volunteer officer or director of association managing residential development; liability; criteria; limitations

(a) A volunteer officer or volunteer director of an association, as defined in subdivision (a) of Section 1351, which manages a common interest development that is exclusively residential, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

- (1) The act or omission was performed within the scope of the officer's or director's association duties.
- (2) The act or omission was performed in good faith.
- (3) The act or omission was not willful, wanton, or grossly negligent.
- (4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the following minimum amount:
  - (A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.
  - (B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (l) of Section 1351, at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the common interest development or is an owner of no more than two separate interests in the common interest development.

(f)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

- (A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.
- (B) Whether to commence a civil action against the builder for defects in design or construction.

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.

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§ 1365.9. Owner limitation liability; insurance

- (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interest in a common interest development that have common areas owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.
- (b) Any cause of action in tort against any owner of a separate interest arising solely by reason of an ownership interest as a tenant in common in the common area of a common interest development shall be brought only against the association and not against the individual owners of the separate interests, as defined in subdivision (l) of Section 1351, if both of the insurance requirements in paragraphs (1) and (2) are met:
- (1) The association maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the association.
  - (2) The coverage described in paragraph (1) is in the following minimum amounts:
    - (A) At least two million dollars (\$2,000,000.00) if the common interest development consists of 100 or fewer separate interests.
    - (B) At least three million dollars (\$3,000,000.00) if the common interest development consists of more than 100 separate interests.
- (c) The association shall, upon issuance or renewal of insurance, but no less than annually, notify its homeowners as to the amount and type of insurance carried by the association, and it shall accompany this notification with statements to the effect that the association is or is not insured to the levels specified by this section, and that if not so insured, owners may be individually liable for the entire amount of a judgment, and if the association is insured by the levels specified in this section, then owners may be individually liable only for their proportional share of assessments levied to pay the amount of any judgment which exceeds the limits of the association's insurance.

§ 1366. Levy of assessments; limitation on increases; delinquent assessments; interest

- (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.
- (b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

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name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986.

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§ 1368. Sale or title transfer; provision of specified items to prospective purchasers; copies; fees; violations; penalty and attorney fees; validity of title transferred in violation; additional requirements

(a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

- (1) A copy of the governing documents of the common interest development.
- (2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.
- (3) A copy of the most recent documents distributed pursuant to Section 1365.

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- (4) A true statement in writing from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, as well as any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.
- (5) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.
- (b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1), (2), (3), and (4) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.
- (c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).
- (d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.
- (e) Nothing in this section affects the validity of title to real property transferred in violation of this section.
- (f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

§ 1368.4. Damage claim against developer; pre-filing notice to members

- (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:
- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
  - (2) The options, including civil actions, that are available to address the problems; and
  - (3) The time and place of this meeting.
- (b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association file the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

§ 1375. Damage claim against developer; notice to developer; other requirements

- (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

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(b)(1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

- (A) A preliminary list of defects;
- (B) A summary of the result of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed; and
- (C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(b)(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(b)(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(b)(3) (B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(b)(3) (B)(1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

- (A) The nature and extent of the claimed defects;
- (B) Proposed methods of repair, to the extent there is sufficient information;
- (C) Proposals for submitting the dispute to alternative dispute resolution; and
- (D) Requests from the builder to inspect the project and conduct testing.

(b)(3) (B)(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer a duty to

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defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d)(1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved for any further obligations to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(d)(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(d)(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(d)(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e)(1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

- (e)(1) (A) A request to meet with the board to discuss a written settlement offer;
- (e)(1) (B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution;
- (e)(1) (C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer; and
- (e)(1) (D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(e)(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligations to satisfy the requirements of this subdivision only.

(e)(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f)(1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

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(f)(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

- (f)(2) (A) By first-class registered or certified mail, return receipt requested; or
- (f)(2) (B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (c), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

- (g)(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.
- (g)(1) (B) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:
  - (i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting;
  - (ii) The options that are available to address the problems, including the filing of a civil action;
  - (iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution; and
  - (iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.
- (g)(1) (C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.
- (g)(1) (D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.
- (g)(1) (E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.
- (g)(2) If the association is relieved of its obligations to satisfy the requirements of subdivisions (a) to (c), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:
  - (g)(2) (A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents;

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- (g)(2) (B) The options, including civil actions, that are available to address the problems;
- (g)(2) (C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure; and
- (g)(2) (D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h)(1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(h)(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(h)(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the association.

(h)(3) (B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(h)(3) (C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(h)(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(i)(1) "Association" shall have the same meaning as defined in subdivision (a) of Section 1351.

(i)(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(i)(3) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.