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Recording Requested By:
Christensen Schwerdtfeger & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101

And When Recorded Mail To:
San Diego Housing Commission
1625 Newton Avenue
San Diego, CA 92113
Attn: Peter Armstrong

F 39P 2W NF

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AFFORDABLE HOUSING AGREEMENT (FOR SALE)

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AFFORDABLE HOUSING AGREEMENT ("Declaration") is made as of this 24th day of February, 2006, by Sigsbee Row, LLC, a California limited liability company ("Declarant").

RECITALS

A. Declarant owns and is developing the real property commonly known as 1702 National Avenue in the City of San Diego, more particularly described on Exhibit A attached hereto ("Property"). Development of the Property is governed by, among other items, Chapter 14, Article 2, Division 13 of the San Diego Municipal Code (the "Inclusionary Ordinance").

B. The Inclusionary Ordinance requires that at least ten percent (10%) of the total dwelling units constructed on the Property be reserved for households with household incomes below specified levels. For any partial unit calculated, the applicant shall pay a prorated amount of the in lieu fee as provided hereinbelow or the applicant shall provide an additional affordable unit. Under the Inclusionary Ordinance, Declarant is required to provide one (1) "Affordable Unit," as hereinafter described. The Inclusionary Ordinance requires all developments in accordance with San Diego Municipal Code §142.1306, except §142.1306(b)(4), to record as an encumbrance a Declaration of Covenants, Conditions and Restrictions, that is approved by the San Diego Housing Commission ("Commission") , in favor of the Commission, as an encumbrance against the Affordable Unit in the development.

C. The Declarant may elect to provide the Affordable Unit as rental unit or for sale unit or by payment of an in lieu fee. Declarant has elected to provide the Affordable Unit as a for sale unit. This Declaration shall be recorded as an encumbrance against and shall restrict the sale and occupancy of one (1) for-sale condominium unit on the Property and serves to memorialize Declarant's agreement to provide the Affordable Unit and imposes covenants, conditions and restrictions on the Property to satisfy the terms of this Declaration and the Inclusionary Ordinance. Prior to the sale of any residential unit on the Property, Declarant shall cause a condominium plan to be recorded against the Property, which condominium plan shall establish all of the units to be constructed on the Property, including without limitation the Affordable Unit, as individual legal condominium units. Concurrently with the sale of the Affordable Unit, Declarant shall cause the purchaser of such Affordable Unit to execute, acknowledge and cause to be recorded against such Affordable Unit a Declaration of Covenants, Conditions and Restrictions and Right of First Refusal (the "Individual Declaration"), substantially in the form attached hereto as Exhibit B, and a Deed of Trust ("Individual Deed of Trust"), substantially in the form attached hereto as Exhibit C, or as otherwise approved by the President and CEO of the Commission.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Commission and Declarant hereby agree as follows:

1. Definitions. The following terms shall have the meanings ascribed to them in this Section 1:

(a) Affordable Unit. "Affordable Unit" means the one (1) dwelling unit Declarant is required to provide on the Property, which is sale and occupancy restricted as provided in this Declaration. As of the date of this Declaration, Declarant intends for Unit #6 to be the Affordable Unit.

(b) Annual Housing Cost. "Annual Housing Cost" has that meaning ascribed to it in Section 3(c) of this Declaration.

(c) Area Median Income. "Area Median Income" means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the U.S. Department of Housing and Urban Development ("HUD"). In the event HUD ceases to publish an established Area Median Income as aforesaid, the Commission may, in its sole discretion, use any other reasonably comparable method of computing Area Median Income and/or the Annual Housing Cost.

(d) City. "City" means the City of San Diego, a charter city.

(e) Commission. "Commission" means the San Diego Housing Commission, a public agency.

(f) Deed of Trust. "Deed of Trust" has that meaning ascribed to it in Section 9(a) of this Declaration.

(g) Declarant. "Declarant" means Sigsbee Row, LLC, a California limited liability company.

(h) Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Affordable Housing Agreement.

(i) Equity. "Equity" has that meaning ascribed to it in Section 4(a) of this Declaration.

(j) Inclusionary Ordinance. "Inclusionary Ordinance" means Chapter 14, Article 2 of the San Diego Municipal Code.

(k) Individual Declaration. "Individual Declaration" means the Declaration of Covenants, Conditions and Restrictions, Affordable Housing Agreement and Right of First Refusal, substantially in the form attached hereto as Exhibit B.

(l) Individual Deed of Trust. "Individual Deed of Trust" means the Deed of Trust, substantially in the form attached hereto as Exhibit C.

(m) In Lieu Fee. "In Lieu Fee" has that meaning ascribed to it in Section 10 of this Declaration.

(n) Maximum Sales Price. "Maximum Sales Price" has that meaning ascribed to it in Section 3(b) of this Declaration.

(o) Partial Affordable Unit. "Partial Affordable Unit" has that meaning ascribed to it in Section 10(a) of this Declaration.

(p) Promissory Note. "Promissory Note" means the promissory note to be executed by the initial Targeted Household, as provided in section 4(b) of this Declaration.

(q) Property. "Property" means that certain real property owned by Declarant and located in the City of San Diego, State of California, more particularly described on Exhibit A, attached hereto.

(r) Resale. "Resale" has that meaning ascribed to it in Section 4(c) of this Declaration.

(s) Targeted Household. "Targeted Household" means persons or families earning not more than one hundred percent (100%) of the then current Area Median Income, provided that such persons or families meet the additional requirements set forth in Section 5 of this Declaration.

(t) Other Terms. Other terms referenced in this Declaration in "quotations" have the meanings ascribed to them in this Declaration.

2. Declarant Covenants Concerning Affordable Unit.

(a) Master Declaration. Declarant agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Property, that one (1) dwelling unit on the Property shall be set aside, reserved and sold as an Affordable Unit. The Affordable Unit shall be comparable in bedroom mix, design and overall quality of construction to the market-rate units on the Property, except that the Affordable Unit shall not be required to have in excess of three bedrooms. The Affordable Unit shall have one bedroom. Declarant, its successors and assigns and all purchasers of Affordable Unit during the term of this Declaration, shall not sell the Affordable Unit to any person other than a Targeted Household, except as otherwise provided herein. The square footage and interior features of the Affordable Unit are not required to be equivalent to the market-rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.

(b) Individual Declarations. Prior to the sale of any residential unit on the Property, Declarant shall cause a condominium plan to be recorded against the Property, which condominium plan shall establish all of the units to be constructed on the Property, including without limitation the Affordable Unit, as individual legal condominium units. Concurrently with the sale of the Affordable Unit, Declarant shall cause the purchaser of the Affordable Unit to execute, acknowledge and cause to be recorded against the Affordable Unit the Individual Declaration and Individual Deed of Trust. Upon recordation of the Individual Declaration and Individual Deed of Trust, this Declaration shall be reconveyed and released by the Declarant and the Commission.

3. Maximum Sales Price.

(a) No Sale by Declarant in Excess of the Maximum Sales Price. No Affordable Unit shall be sold to a prospective purchaser or occupied by any person unless and until the Commission has verified that the prospective tenant or occupant is a Targeted Household, and that the sales price of the Affordable Unit does not exceed the Maximum Sales Price. Declarant may not receive any amount of money and/or other consideration upon the transfer or sale of the Affordable Unit in excess of the Maximum Sales Price.

(b) Calculation of Maximum Sales Price. The Maximum Sales Price shall be determined by the Commission annually as adjusted for bedroom size. The Maximum Sales Price as determined by the Commission shall equal the purchase price which will result in an "Annual Housing Cost" to the purchaser of an Affordable Unit, which does not exceed the thirty-five percent (35%) of 100% of Area Median Income adjusted for household size, determined as of the date of the close of escrow, assuming the purchaser will make a five percent (5%) downpayment.

(c) Definition of Annual Housing Cost. "Annual Housing Cost" means all housing costs applicable to the Affordable Unit, as determined by the Commission, including, without limitation, mortgage principal and interest, taxes, insurance, homeowners association fees and assessments.

4. Equity Sharing. Upon resale of the Affordable Unit by the initial Targeted Household, the Equity, as defined below, shall be shared between the Targeted Household and the

Commission as set forth in this Section 4. Notwithstanding the foregoing or anything to the contrary set forth herein, the Equity shall not be shared and the Promissory Note shall not be fully repaid, as set forth in this Section 4, provided that each of the following conditions are met: (i) the initial Targeted Household transfers the Affordable Unit to a person meeting the definition of "Targeted Household", and is approved as a Targeted Household by the Commission; (ii) the total consideration for such transfer does not exceed the then Maximum Sales Price; and (iii) the purchaser assumes all of the obligations of the initial Targeted Household under the Individual Declaration, the Promissory Note and the Individual Deed of Trust.

(a) Equity Defined. The term "Equity" shall mean the difference between, the unrestricted fair market value of the Affordable Unit on the date of the first Resale, as determined by an appraisal approved by the Commission minus the sum of: (i) the original unrestricted fair market value of the Affordable Unit at the time of its acquisition by the Targeted Household, plus (ii) the actual costs of any Commission approved improvements to the Affordable Unit.

(b) Promissory Note and Replacement Deed of Trust. Prior to or concurrently with the closing of the sale of the Affordable Unit to the initial Targeted Household, Declarant shall cause such Targeted Household to execute a promissory note (the "Promissory Note") in favor of the Commission and deliver the same to the Commission. The Promissory Note shall be in a form acceptable to the President and CEO of the Commission and general counsel. The original principal amount of the Promissory Note shall be the amount equal to the difference between the unrestricted fair market value of the Affordable Unit at the time of its acquisition by the Targeted Household (as determined by an appraisal as approved by the Commission) minus the actual purchase price paid by the Targeted Household for the Affordable Unit. Which amounts (the original principal amount and the actual purchase price) shall be approved by the Commission in writing, in the Commission's sole discretion, prior to the initial Targeted Household's execution and delivery of the Promissory Note. The Promissory Note and the Individual Declaration shall be secured by the Individual Deed of Trust. The Individual Deed of Trust shall be recorded against the Affordable Unit concurrently with the closing of the sale of the Affordable Unit to the initial purchaser.

(c) Resale Defined.

(1) "Resale" means any of the following: (i) the sale, conveyance or transfer of all or any part of the Affordable Unit or any interest in the Affordable Unit by a Targeted Household, (ii) if the Targeted Household is not a natural person, the sale, conveyance or transfer of all or any part or any beneficial interest in the Targeted Household, (iii) any refinancing of all or any part of the Affordable Unit by a Targeted Household, except as provided in 4(c)(2) below, (iv) the failure of the Targeted Household to occupy the Affordable Unit as his, her, or their, primary residence, (v) the leasing of all or any part of the Affordable Unit, (vi) any material breach of the Promissory Note, the Individual Declaration or the Individual Deed of Trust, or (vii) the filing of bankruptcy by the Targeted Household.

(2) Notwithstanding the foregoing, a refinancing of the Affordable Unit shall not be considered a Resale, provided either:

(i) The principal balance of the Targeted Household's loan after the refinancing, does not exceed the principal balance of the Targeted Household's loan before the refinancing, plus reasonable closing costs; or

(ii) Both of the following conditions are met, and provided that the Commission provides advance written consent to the Targeted Household of the refinancing: (A) the Targeted Household receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of the Targeted Household's loan before the refinancing; and (B) such cash is borrowed for the purpose of and is used for improvements to the Affordable Unit, which improvements are preapproved by the Commission prior to the Targeted Household's obtaining the refinancing

(d) Equity Sharing Upon the First Resale of an Affordable Unit. Upon the first Resale of the Affordable Unit during the first 15 years from the date the initial Targeted Household acquires title to the Property, provided the initial Targeted Household does not sell the Affordable Unit to a person that qualifies as a Targeted Household as set forth herein, the Commission and the owner of the Affordable Unit shall share the Equity in accordance with the following table:

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69

Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

(e) Equity Sharing Upon Refinancings, Transfers and Leases. Upon each transfer, lease and or refinancing during the first 15 years from the date the Affordable Unit is acquired by the initial Targeted Household, the Commission and the owner of the Affordable Unit shall share the equity in the Affordable Unit based upon an appraisal of the Affordable Unit in accordance with the provisions of the table provided in Section 4(d), above.

(f) Pay-Off of the Promissory Note. Upon the first Resale, whenever it occurs, the Promissory Note shall be due and payable in full paid.

(g) Inclusionary Housing Fund. All funds collected pursuant to this Section 4 of this Declaration shall be deposited in the Inclusionary Housing Fund.

(h) Resale Must be for Fair Market Value. After the initial sale of the Affordable Unit by Declarant to a Targeted Household, the owner of the Affordable Unit shall notify the Commission in writing of such owner's intent to sell the Affordable Unit prior to entering into any agreement to sell the Affordable Unit and the Affordable Unit shall not be sold for less than its fair market value, except as set forth in Section 4, above.

(i) City's Right of First Refusal. The City shall have the first right of refusal to purchase the Affordable Unit prior to the first Resale. If the City elects to exercise its first right of refusal it shall pay a purchase price for the Affordable Unit equal to the unrestricted fair market value of the Affordable Unit as determined by an appraiser selected by City in its sole discretion. In such event, all of the provisions of this Section 4 of this Declaration, including without limitation, the equity sharing provisions and additional payment provision, shall continue to apply with respect to the Affordable Unit.

(j) Release of this Declaration. Upon the initial sale of an Affordable Unit to a Targeted Household and recordation of the Individual Declaration and Individual Deed of Trust, Declarant and Commission shall release this Declaration and the Deed of Trust only as to such Affordable Unit.

5. Additional Restrictions on Targeted Household.

(a) No Relationship With Declarant. The term Targeted Household shall not include Declarant or any relative (by blood or marriage) of Declarant or any person employed by Declarant or of any individuals who are members, principals, executives, directors, partners or shareholders in Declarant or in any entity having an ownership in Declarant or in the Property.

(b) No Full-Time Students. The term Targeted Household shall not include any person who is a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term "full-time student" shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(c) No Student Dependents. Notwithstanding the provisions of subparagraph 5(b), the terms Targeted Household shall not include any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same unit.

(d) No Owners of Real Property. The term Targeted Household shall not include any person or any household comprised of one or more persons who own real property.

(e) Liquid Asset Limitation. The term Targeted Household shall not include any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, one hundred percent (100%) of the then-current annual Area Median Income. As used herein, the term "liquid assets" refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term "liquid assets" shall not include retirement funds which are not readily accessible or which cannot be accessed by the buyer without the buyer incurring a penalty.

(f) Income of Co-Purchasers. The income of all co-purchasers and/or occupants shall be taken into account in determining whether a household is a Targeted Household.

6. Construction and Occupancy Schedule for Affordable Unit. The Affordable Unit shall be constructed and receive final inspection approval no later than the date that the market-rate units receive final inspection and approval. Time is of the essence in the construction and occupancy of the Affordable Unit.

7. Extension of Time Parameters for Good Cause. The Commission may, its sole discretion, extend one or more time deadlines for performance as referenced in Section 6 hereof, for good cause. "Good cause" shall include, but shall not be limited to, acts of God, labor strikes, war, riots, etc., as shall be determined by the Commission.

8. Recordation. This Declaration shall be recorded against the Property in the Office of the County Recorder for the County of San Diego in first lien priority position.

9. Deed of Trust.

(a) Execution and Recordation. Upon the execution of this Declaration, Declarant shall execute, acknowledge and deliver a deed of trust (the "Deed of Trust") to the Commission, and will cause the Deed of Trust to be recorded in second lien priority, in favor of the Commission against the Property, to secure the performance of the terms and conditions of this Declaration.

(b) Limited Subordination. The Deed of Trust shall be junior only to this Declaration and the Condominium Covenants, Conditions and Restrictions for the Property and any sale made pursuant to the Deed of Trust shall have no effect on the Condominium Covenants, Conditions and Restrictions for the Property. Notwithstanding the foregoing, the Deed of Trust may be subordinated to a deed or deeds of trust in favor of Declarant's lender in the Commission's sole discretion, if necessary to ensure the Declarant's receipt of adequate construction or permanent financing for the property and/or to allow the initial Targeted Household to purchase an Affordable Unit. The subordination shall be upon such terms and conditions and for such periods of time as the Commission may approve to protect the Affordable Unit as required by this Declaration.

10. In Lieu Fee. Ten percent (10%) of the total dwelling units in the development must be Affordable Units. Ten percent (10%) of the total dwelling units in the development results in the Declarant being required to construct a fraction of an Affordable Unit ("Partial Affordable Unit"). Declarant shall pay an In Lieu Fee, to compensate City for the Partial Affordable Unit in the amount of Fifteen Thousand Eight Hundred Forty-Two and No/100 Dollars ($15,842.00), to the Commission at the time of execution of this Declaration, which time shall be before any building permit may be issued with respect to the Property. Declarant had the right to construct an additional affordable unit in lieu of paying the In Lieu Fee, but Declarant has elected not to do so and has agreed to pay the In Lieu Fee in full at the time this Declaration is executed.

11. Indemnity. Declarant agrees to indemnify, defend and hold harmless the City, the Commission, the Housing Authority of the City of San Diego, and any and all of their respective Commissioners, members, officers, agents, servants, or employees (the "Indemnitees") from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the construction, sale, rental or operation of the Property and/or the Affordable Unit, or from the default by Declarant in the performance of its obligations under this Declaration; provided, however, that Declarant shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the sole negligence or willful misconduct of the Indemnitees.

12. Marketing Requirements; No Discrimination. Declarant shall follow the marketing requirements and procedures of the Commission's Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual with respect to the Affordable Unit. Declarant agrees that neither it nor its agents shall discriminate against any purchaser or

prospective purchaser of any unit on the basis of race, color, religion, sex, national origin, age, physical handicap, or the fact that a prospective purchaser or purchaser has a child or children.

13. Covenants to Run With the Land. Declarant agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Declaration. Further, Declarant agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes.

14. Successors and Assigns. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, successors and assigns. Declarant shall not sell, transfer or otherwise dispose of the Property, any portion thereof, or any interest therein unless the proposed transferee shall have executed and delivered to the Commission an express written assumption of all of Declarant's obligations under this Declaration, on a form reasonably acceptable to the Commission. Upon assignment and assumption by a successor entity, as approved by the Commission, Declarant shall be released from all further responsibility under the terms of this Declaration.

15. Title Insurance. Declarant shall obtain and pay for an American Land Title Association lender's policy with endorsements satisfactory to Commission in the amount of One Hundred Thousand Dollars ($100,000.00), insuring that this Declaration and the Deed of Trust are encumbrances against the Property, subordinate to the Condominium Covenants, Conditions and Restrictions for the Property and to no other documents. Notwithstanding the foregoing, such ALTA lender's policy may indicate that the Deed of Trust has been subordinated as provided in Section 9(b) of this Declaration. Declarant shall further obtain and pay for American Land Title Association lender's policy with endorsements satisfactory to Commission in the amount of One Hundred Thousand Dollars ($100,000.00), insuring the Individual Declaration and Individual Deed of Trust are encumbrances against the Affordable Unit, subordinate to no other documents, except as otherwise provided herein.

16. Occupancy Monitoring and Fees.

(a) Documentation. Declarant hereby agrees to provide the Commission with such documentation relating to the Affordable Unit as is reasonably necessary for the Commission to monitor compliance with the terms set forth herein. Such documentation includes, but is not limited to, a copy of the certificate of occupancy for the Affordable Unit and tenant eligibility information for the Affordable Unit as reasonably requested.

(b) Initial Set-Up Fee and Occupancy Monitoring Fee. Developer agrees to pay the Commission, at the time the Certificate of Occupancy is issued by the City, a one-time initial fee to the Commission of One Thousand and No/100 Dollars ($1,000.00) per Affordable Unit for monitoring system set-up.

(c) Cost Reimbursement. Further, Declarant agrees to pay the Commission, at the time this Declaration is executed, a reasonable fee to reimburse the Commission for the costs incurred by the Commission in connection with implementation of the Inclusionary Ordinance of One Thousand Six Hundred Sixty and No/100 Dollars ($1,660.00).

17. Standing, equitable remedies; cumulative remedies. Declarant expressly agrees and declares that the Commission and/or the City of San Diego and/or their successors shall be the proper parties and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Declarant expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, and to assure compliance with this Declaration. Nothing in this subparagraph, and no recovery to the Commission and/or the City of San Diego, shall restrict or limit the rights or remedies of persons or entities other than the Commission and/or the City of San Diego, against Declarant in connection with the same or related acts by Declarant.

18. General Provisions.

(a) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Declaration has been made in connection with this Declaration. This Declaration contains the entire agreement and understanding between the parties as to its subject matter.

(b) Waiver and Amendment. No provision of this Declaration, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Declaration may be amended, modified or rescinded only in writing signed by Declarant and the Commission.

(c) Time of Essence. Time is expressly declared to be of the essence in this Declaration, and of every provision in which time is an element.

(d) Captions. Paragraph titles and captions contained in this Declaration are inserted as a matter of convenience and for reference, and are not a substantive part of this Declaration.

(e) Further Assurances. The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Declaration or to accomplish its intent.

(f) Benefit and Burden. This Declaration shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. This Declaration is not intended to benefit any person other than the parties hereto.

(g) Governing Law. This Declaration has been entered into in the State of California, and shall be interpreted and enforced under California law.

(h) Attorneys' Fees. The prevailing party in any action, including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Declaration shall be entitled to reasonable attorneys' fees and costs (including, but not limited to, experts' fees and costs and trustees' fees, and including "costs" regardless of whether recoverable as such under any statute) incurred in such action.

(i) Signatures. This Declaration may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Declaration. All individuals signing this Declaration for a party which is a corporation, a partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Commission that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

(j) Exhibits and Recitals Incorporated. All exhibits referred to in this Declaration are hereby incorporated in this Declaration by this reference, regardless of whether or not the exhibits are actually attached to this Declaration. The Recitals to this Declaration are hereby incorporated in this Declaration by this reference.

(k) Notices. All notices given pursuant to this Declaration or law shall be written. Notices shall be delivered with all delivery or postal charges prepaid. Notices may be given personally; by facsimile; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service. Notices shall be deemed received on the date of personal delivery or facsimile transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a party gives notice of a change, notices shall be sent to:

If to the City:	City Manager 202 C Street San Diego, CA 92101
If to the Commission:	San Diego Housing Commission Attn: Elizabeth Morris, President & CEO 1625 Newton Avenue San Diego, CA 92113
If to Declarant:	Sigsbee Row, LLC Attn: Greg Paquette 961 South 16th Street San Diego, CA 92113

(l) Escrow. Declarant shall open an escrow at Chicago Title Company to insure proper and timely recordation of this Declaration and the Deed of Trust.

(m) Declarant's Notice to Commission. Declarant shall provide Commission with written notification of obtaining the building permit(s) for the Property, concurrently with the accomplishment of the same.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the date first written above.

DECLARANT:
Sigsbee Row, LLC, a California limited liability company
By: Wyman Wildbore, Inc., a California corporation
Its: Manager

By: ______________________
Print Name: GLENN WILBOR
Its: MANAGING MEMBER

By: ______________________
Print Name: ______________________
Its: ______________________

COMMISSION:
San Diego Housing Commission, a public agency

By: ______________________
for Elizabeth C. Morris, President & CEO

APPROVED AS TO FORM:
Christensen Schwerdtfeger & Spath, LLP

By: ______________________
Walter F. Spath III
General Counsel, San Diego Housing Commission

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ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On Feb 22, 2006, before me, Robert Chilcoat, Notary Public personally appeared, Glenn Wilbor 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 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AFFORDABLE HOUSING AGREEMENT 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 on behalf of which the person~~(s)~~ acted, executed the instrument.

R. CHILCOAT
COMM. #1620350
Notary Public - California
San Diego County
My Comm. Expires Nov. 10, 2009

WITNESS my hand and official seal.

Signature R. Chilcoat (Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On _____________, 200___, before me, _________________________________ personally appeared, _________________________________ 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 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AFFORDABLE HOUSING AGREEMENT 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _________________________________ (Seal)

ACKNOWLEDGMENT

State of California)
)
County of San Diego)

On February 27, 2006, before me, Angela G. Risotti Notary Public personally appeared, Carrol Vaughan 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 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AFFORDABLE HOUSING AGREEMENT 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 on behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Angela G. Risotti (Seal)

CSC1
ANGELA G. RISOTTI
COMM. #1486190
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
My Commission Expires
APRIL 27, 2008
CSC1

EXHIBIT A

Legal Description of the Property

Parcel 1:

Lots 1 and 2 in Block 139 of the subdivision of pueblo lot 1157, commonly known as Mannasse and Schillers Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 209, filed in the Office of the County Recorder of San Diego County, July 11, 1870.

Parcel 2:

Lots 3 and 4 in Block 139 of Mannasse and Schillers Subdivision of pueblo lot 1157, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 209, filed in the Office of the County Recorder of San Diego County, July 11, 1870.

EXHIBIT B

Proforma Individual Declaration

13786

EXHIBIT B

Proforma Individual Declaration

NO CHARGE ON THIS DOCUMENT FOR THE BENEFIT OF THE CITY OF SAN DIEGO

Recording Requested By:
Christensen Schwerdtfeger & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101

And When Recorded Mail To:
San Diego Housing Commission
1625 Newton Avenue
San Diego, CA 92113
Attn: Peter Armstrong

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AFFORDABLE HOUSING AGREEMENT AND RIGHT OF FIRST REFUSAL (FOR SALE)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AFFORDABLE HOUSING AGREEMENT AND RIGHT OF FIRST REFUSAL ("Declaration") is made as of ____________ __, 200__, by ______________________________ ("Declarant"), in connection with that certain condominium unit in commonly known as ______________________ (*address*) and more particularly described on Exhibit A attached hereto (the "Restricted Unit").

RECITALS

A. Declarant purchased the Restricted Unit concurrently with the execution and delivery of this Declaration. The Restricted Unit is governed by, among other items, Chapter 14, Article 2, Division 13 of the San Diego Municipal Code (the "Inclusionary Ordinance"), which requires that this Declaration be recorded against the Restricted Unit.

B. This Declaration shall be recorded as an encumbrance against and shall restrict the sale and occupancy of the Restricted Unit and serves to memorialize Declarant's agreement to restrict the sale and occupancy of the Restricted Unit and imposes covenants, conditions and restrictions on the Restricted Unit to satisfy the terms of this Declaration and the Inclusionary Ordinance.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Commission and Declarant hereby agree as follows:

1. Definitions. The following terms shall have the following meanings:

(a) Area Median Income. "Area Median Income" means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the U.S. Department of Housing and Urban Development ("HUD"). In the event HUD ceases to publish an established Area Median Income as aforesaid, the Commission may, in its sole discretion, use any other reasonably comparable method of computing Area Median Income and/or the Annual Housing Cost.

(b) City. "City" means the City of San Diego, a charter city.

(c) Commission. "Commission" means the San Diego Housing Commission, a public agency.

(d) Deed of Trust. "Deed of Trust" means the deed of trust to be executed by Declarant concurrently herewith, as provided in Section 7 of this Declaration, in a form acceptable to the President and CEO of the Commission and general counsel.

(e) Declarant. "Declarant" means the person defined as such first paragraph of this Declaration.

(f) Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions, Affordable Housing Agreement and Right of First Refusal.

(g) Equity. "Equity" has that meaning ascribed to it in Section 3 of this Declaration.

(h) Inclusionary Ordinance. "Inclusionary Ordinance" means Chapter 14, Article 2 of the San Diego Municipal Code.

(i) Maximum Sales Price. "Maximum Sales Price" shall be determined by the Commission as adjusted for bedroom size. The Maximum Sales Price as determined by the Commission shall equal the purchase price which will result in an "Annual Housing Cost" to the purchaser of the Restricted Unit, which does not exceed thirty-five percent (35%) of 100% of Area Median Income adjusted for household size, determined as of the date of the close of escrow, assuming the purchaser will make a five percent (5%) downpayment. "Annual Housing Cost" means all housing costs applicable to the Restricted Unit, as determined by the Commission, including, without limitation, mortgage principal and interest, taxes, insurance, homeowners association fees and assessments.

(j) Promissory Note. "Promissory Note" means the promissory note to be executed by Declarant concurrently herewith, as provided in section 3 of this Declaration, in a form acceptable to the President and CEO of the Commission and general counsel.

(k) Resale. "Resale" has that meaning ascribed to it in Section 3 of this Declaration.

(l) Restricted Unit. "Restricted Unit" means that certain three-bedroom, three bathroom condominium unit owned by Declarant and located in the City of San Diego, State of California, more particularly described on Exhibit A, attached hereto.

(m) Targeted Household. "Targeted Household" means persons or families earning not more than one hundred percent (100%) of the then current Area Median Income, provided that such persons or families meet the additional requirements set forth in Section 4 of this Declaration.

(n) Other Terms. Other terms referenced in this Declaration in "quotations" have the meanings ascribed to them in this Declaration.

2. Declarant Covenants Concerning the Restricted Unit. Declarant agrees and covenants on behalf of itself and its successors and assigns, and each successor in interest to the Restricted Unit, that at all times during the term of this Declaration the Restricted Unit shall not be sold to any person other than a Targeted Household, except as otherwise provided herein. Declarant represents and warrants to the Commission and the City that Declarant is a Targeted Household, earning not more than one hundred percent (100%) of the current Area Median Income and that Declarant meets the requirements set forth in Section 4 of this Declaration.

3. Equity Sharing. Upon the first Resale, as defined below, of the Restricted Unit by the Declarant, during the first 15 years from the date this Declaration is recorded against the Restricted Unit, the Equity, as defined below, shall be shared between the Declarant and the Commission as set forth in this Section 3. Notwithstanding the foregoing or anything to the contrary set forth herein, the Equity shall not be shared as set forth in this Section 3 provided that all of the following conditions are met: (i) Declarant transfers the Restricted Unit to a person meeting the definition of "Targeted Household", and is approved as a Targeted Household by the Commission; (ii) the total consideration for such transfer does not exceed the then Maximum Sales Price; and (iii) the purchaser assumes all of the obligations of the Declarant under this Declaration, the Promissory Note and the Deed of Trust.

(a) Equity Defined. The term "Equity" shall mean the difference between, the unrestricted fair market value of the Restricted Unit on the date of the first Resale, as determined by an appraisal approved by the Commission, minus the sum of: (i) the original unrestricted fair market value of the Restricted Unit at the time of its acquisition by Declarant, plus (ii) the actual costs of any Commission approved improvements to the Restricted Unit.

(b) Promissory Note and Deed of Trust. Prior to or concurrently with the closing of the sale of the Restricted Unit to the Declarant, Declarant shall execute the Promissory Note in favor of the Commission and deliver the same to the Commission. The original principal amount of the Promissory Note shall be the amount equal to the difference between the unrestricted fair market value of the Restricted Unit at the time of its acquisition by the Declarant (as determined by an appraisal as approved by the Commission) minus the actual purchase price paid by the Declarant for the Restricted Unit. Which amounts (the original principal amount and the actual purchase price) shall be approved by the Commission in writing, in the Commission's sole discretion, prior to the Declarant's execution and delivery of the Promissory Note. The Promissory Note and this Declaration shall be secured by the Deed of Trust executed by Declarant in favor of the Commission. The Deed of Trust shall be recorded against the Restricted Unit concurrently with the closing of the sale of the Restricted Unit to Declarant.

(c) Resale Defined.

(1) "Resale" means any of the following: (i) the sale, conveyance or transfer of all or any part of the Restricted Unit or any interest in the Restricted Unit, (ii) if the Declarant is not a natural person, the sale, conveyance or transfer of all or any part or any beneficial interest in the Declarant, (iii) any refinancing of all or any part of the Restricted Unit, except as provided in 4(b)(2) below, (iv) the failure of the Declarant to occupy the Restricted Unit as his, her, or their, primary residence until the earlier of: (A) the expiration of 15 years from the date this Declaration is recorded against the Restricted Unit and full repayment of the Promissory Note; or (B) the closing of a Resale of the Restricted Unit, including full repayment of the Promissory Note and payment of the Commission's share of the Equity as set forth in Section 3(d), below, (v) the leasing of all or any part of the Restricted Unit, (vi) any material breach of the Promissory Note, this Declaration or the Deed of Trust, or (vii) the filing of bankruptcy by the Declarant.

(2) Notwithstanding the foregoing, a refinancing of the Restricted Unit shall not be considered a Resale, provided either:

(i) The principal balance of the Declarant's loan after the refinancing, does not exceed the principal balance of the Declarant's loan before the refinancing, plus reasonable closing costs; or

(ii) Both of the following conditions are met, and provided that the Commission provides advance written consent to the Declarant of the refinancing: (A) Declarant receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of the Declarant's loan before the refinancing; and (B) such cash is borrowed for the purpose of and is used for improvements to the Restricted Unit, which improvements are preapproved by the Commission prior to the Declarant's obtaining the refinancing.

(d) Equity Sharing Upon the First Resale of the Restricted Unit. Upon the first Resale of the Restricted Unit during the first 15 years from the date this Declaration is recorded against the Restricted Unit, provided the Declarant does not sell the Restricted Unit to a person that qualifies as a Targeted Household for a total consideration not in excess of the Maximum Purchase Price as set forth herein, the Commission and the Declarant shall share the Equity in accordance with the following table:

Length of Ownership at the Time of Resale	Share of Equity to Declarant
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

(e) Pay-Off of the Promissory Note. The Promissory Note shall be due and payable in full upon the earlier of: (i) the first Resale (unless such Resale meets the requirements set forth in the second sentence of Section 3, above); or (ii) the Restricted Unit is no longer owner occupied; or (iii) thirty (30) years from the date first set forth above. Prepayment of the Promissory Note shall not effect the obligation to share the Equity as set forth in Section 3(d), above.

(f) Inclusionary Housing Fund. All funds collected pursuant to this Section 3 shall be deposited by the Commission into the Inclusionary Housing Fund.

(g) Resale Must be for Fair Market Value. Declarant shall notify the Commission in writing of Declarant's intent to sell the Restricted Unit prior to entering into any agreement to sell the Restricted Unit and the Restricted Unit shall not be sold for less than its fair market value.

(h) City's Right of First Refusal. The City shall have the first right of refusal to purchase the Restricted Unit prior to the first Resale. If the City elects to exercise its first right of refusal, which shall in no event be later than ninety (90) days from the date the City receives notice that the Restricted Unit is being offered for sale, the City shall pay a purchase price for the Restricted Unit equal to the unrestricted fair market value of the Restricted Unit as determined by an appraiser selected by City in its sole discretion. In such event, all of the provisions of this Section 3 of this Declaration, including without limitation, the equity sharing provisions and additional payment provision, shall continue to apply with respect to the Restricted Unit.

(i) Release of this Declaration. Upon the first Resale of the Restricted Unit (or the City's exercise of its first right of refusal) and receipt of the Commission's share of the Equity, full repayment of all amounts due under the Promissory Note and any other amounts due hereunder, the Commission shall release this Declaration only as to the Restricted Unit.

4. Additional Restrictions on Declarant and Targeted Households.

(a) No Relationship With Developer. The term Targeted Household shall not include any person related (by blood or marriage) to Sigsbee Row, LLC, or Wyman Wildbore, Inc., or any person employed by Sigsbee Row, LLC, or Wyman Wildbore, Inc., or any individuals who are members, principals, officers, directors, partners, employees, agents or shareholders of Sigsbee Row, LLC, or Wyman Wildbore, Inc., or any entity having an ownership in Sigsbee Row, LLC, or Wyman Wildbore, Inc., or in the Restricted Unit.

(b) No Full-Time Students. The term Targeted Household shall not include any person who is a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term "full-time student" shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(c) No Student Dependents. Notwithstanding the provisions of subparagraph 4(b), the terms Targeted Household shall not include any student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the same unit.

(d) No Owners of Real Property. The term Targeted Household shall not include any person or any household comprised of one or more persons who own real property.

(e) Liquid Asset Limitation. The term Targeted Household shall not include any person or household holding, directly or indirectly, liquid assets whose aggregate value exceeds, at the time of determination of eligibility, one hundred percent (100%) of the then-current annual Area Median Income. As used herein, the term "liquid assets" refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term "liquid assets" shall not include retirement funds which are not readily accessible or which cannot be accessed by the buyer without the buyer incurring a penalty.

(f) Income of Co-Purchasers. The income of all co-purchasers and/or occupants shall be taken into account in determining whether a household is a Targeted Household.

5. Representations and Warranties of Declarant. Declarant represents and warrants to Commission as follows:

(a) Annual Gross Income. Declarant's annual gross income, including the income of any co-purchasers or co-tenants, at the time of the execution of this Declaration does not exceed one hundred percent (100%) of the Area Median Income. "Area Median Income" means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the U.S. Department of Housing and Urban Development.

(b) Principal Place of Residence. For so long as Declarant owns the Restricted Unit during the thirty (30) year period beginning on the date Declarant acquires the Restricted Unit, Declarant will reside in the Restricted Unit as Declarant's principal place of residence, unless the Note has been repaid in full and at least fifteen (15) years have elapsed from the date this Declaration is recorded against the Restricted Unit. The Declarant shall be considered as occupying the Restricted Unit as a principal place of residence if the Declarant is living on the Restricted Unit for at least ten (10) months out of each calendar year.

(c) Liquid Assets. At the time of the execution of this Declaration, Declarant, including the any co-purchasers or co-tenants, does not hold, directly or indirectly, "liquid assets", as defined below, whose aggregate value exceeds one hundred percent (100%) of the Area Median Income. As used herein, the term "liquid assets" refers to cash and assets which are readily convertible to cash within a reasonable period, including but not limited to savings and checking accounts, certificates of deposit of any term, marketable securities, money market and similar accounts, mutual fund shares, and insurance policy cash values. The term "liquid assets" shall not include retirement funds which are not readily accessible or which cannot be accessed by the buyer without the buyer incurring a penalty.

(d) No Relationship With The Developer. Declarant is not, and none of the co-purchasers or co-tenants of Declarant are, related (by blood or marriage) to any person employed by Sigsbee Row, LLC, or Wyman Wildbore, Inc., or of any individuals who are members, principals, officers, directors, partners, employees, agents or shareholders of Sigsbee Row, LLC, or Wyman Wildbore, Inc., or any entity having an ownership in Sigsbee Row, LLC, or Wyman Wildbore, Inc ., or in the Restricted Unit.

(e) Not a Full-Time Student. Declarant is not, and none of the co-purchasers or co-tenants of Declarant are, a full-time student, or a household comprised exclusively of persons who are full-time students, unless such persons are married and eligible to file a joint federal income tax return. The term "full-time student" shall be defined as any person who will be or has been a full-time student during five calendar months of the calendar year in question at an educational institution (other than a correspondence school) with regular faculty and students.

(f) Not a Student Dependent. Declarant is not, and none of the co-purchasers or co-tenants of Declarant are, a student dependent as defined in the U.S. Internal Revenue Code, unless the taxpayer (upon whom the student in question is dependent) resides in the Restricted Unit.

(g) Not an Owner of Real Property. Declarant does not, and none of the co-purchasers or co-tenants of Declarant, own any real property other than the Restricted Unit.

(h) Acknowledgement of Right of First Refusal. Declarant hereby acknowledges and agrees that the City shall have the first right of refusal to purchase the Restricted Unit prior to the first Resale of the Restricted Unit. If the City elects to exercise its first right of refusal it shall pay a purchase price for the Restricted Unit equal to the unrestricted fair market value of the Restricted Unit as determined by an appraiser selected by City in its sole discretion. In such event, all of the Principal and the Commission's share of the Equity shall be due and payable as set forth herein.

6. Recordation. This Declaration shall be recorded in the Office of the County Recorder for the County of San Diego in first lien priority position and shall encumber the Restricted Unit.

7. Deed of Trust.

(a) Execution and Recordation. Upon the execution of this Declaration, Declarant shall execute, acknowledge and deliver a deed of trust (the "Deed of Trust") to the Commission, and will cause the Deed of Trust to be recorded in second lien priority, in favor of the Commission against the Restricted Unit, to secure the performance of the terms and conditions of this Declaration and the Promissory Note.

(b) Limited Subordination. The Deed of Trust shall be junior only to this Declaration. Notwithstanding the foregoing, the Deed of Trust may be subordinated to a deed or deeds of trust in favor of Declarant's lender, in the Commission's sole discretion, if necessary to allow the Declarant to purchase the Restricted Unit. The subordination shall be upon such terms and conditions and for such periods of time as the Commission may approve to protect the Restricted Unit as required by this Declaration.

8. Indemnity. Declarant agrees to indemnify, defend and hold harmless the City, the Commission, the Housing Authority of the City of San Diego, and any and all of their respective Commissioners, members, officers, agents, servants, or employees (the "Indemnitees") from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the Restricted Unit, or from the default by Declarant in the

performance of its obligations under this Declaration; provided, however, that Declarant shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the sole negligence or willful misconduct of the Indemnitees.

9. No Discrimination. Declarant agrees that neither it nor its agents shall discriminate against any purchaser or prospective purchaser of the any unit on the basis of race, color, religion, sex, national origin, age, physical handicap, or the fact that a prospective purchaser or purchaser has a child or children.

10. Covenants to Run With the Land. Declarant agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Restricted Unit and upon every person having any interest therein at any time and from time to time during the term of this Declaration. Further, Declarant agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes.

11. Successors and Assigns. This Declaration shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, successors and assigns.

12. Standing, Equitable Remedies; Cumulative Remedies. Declarant expressly agrees and declares that the Commission and/or the City of San Diego and/or their successors shall be the proper parties and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Declarant expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, and to assure compliance with this Declaration. Nothing in this subparagraph, and no recovery to the Commission and/or the City of San Diego, shall restrict or limit the rights or remedies of persons or entities other than the Commission and/or the City of San Diego, against Declarant in connection with the same or related acts by Declarant.

13. General Provisions.

(a) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Declaration has been made in connection with this Declaration. This Declaration contains the entire agreement and understanding between the parties as to its subject matter.

(b) Waiver and Amendment. No provision of this Declaration, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Declaration may be amended, modified or rescinded only in writing signed by Declarant and the Commission.

(c) Time of Essence. Time is expressly declared to be of the essence in this Declaration, and of every provision in which time is an element.

(d) Captions. Paragraph titles and captions contained in this Declaration are inserted as a matter of convenience and for reference, and are not a substantive part of this Declaration.

(e) Further Assurances. The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Declaration or to accomplish its intent.

(f) Benefit and Burden. This Declaration shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. This Declaration is not intended to benefit any person other than the parties hereto.

(g) Governing Law. This Declaration has been entered into in the State of California, and shall be interpreted and enforced under California law.

(h) Attorneys' Fees. The prevailing party in any action, including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Declaration shall be entitled to reasonable attorneys' fees and costs (including, but not limited to, experts' fees and costs and trustee's fees, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

(i) Signatures. This Declaration may be signed in counterpart. All individuals signing this Declaration for a party which is a corporation, a partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Commission that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

(j) Exhibits and Recitals Incorporated. All exhibits referred to in this Declaration are hereby incorporated in this Declaration by this reference, regardless of whether or not the exhibits are actually attached to this Declaration. The Recitals to this Declaration are hereby incorporated in this Declaration by this reference.

(k) Notices. All notices given pursuant to this Declaration or law shall be written. Notices shall be delivered with all delivery or postal charges prepaid. Notices may be given personally; by facsimile; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service. Notices shall be deemed received on the date of personal delivery or facsimile transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a party gives notice of a change, notices shall be sent to:

If to the City: City Manager
202 C Street
San Diego, CA 92101

If to the Commission: San Diego Housing Commission
Attn: Elizabeth Morris, President & CEO
1625 Newton Avenue
San Diego, CA 92113

If to Declarant: ______________________
____
____
____

IN WITNESS WHEREOF, the Declarant caused this Declaration to be executed as of the date first written above.

DECLARANT:

____
Print Name: ______________________

____
Print Name: ______________________

COMMISSION:
San Diego Housing Commission, a public agency

By:______________________________
Elizabeth C. Morris, President & CEO

APPROVED AS TO FORM:

Christensen Schwerdtfeger & Spath, LLP,
a California limited liability partnership

By: ______________________________
Walter F. Spath III
General Counsel
San Diego Housing Commission

EXHIBIT C

Proforma Individual Deed of Trust

EXHIBIT C

Proforma Individual Deed of Trust

NO CHARGE ON THIS DOCUMENT FOR THE BENEFIT OF A STATE AGENCY FORMED BY THE CITY OF SAN DIEGO

Recording Requested By
And When Recorded Mail To:

San Diego Housing Commission
1625 Newton Avenue
San Diego, CA 92113
Attn: Loan Management

NOTICE: THIS DEED OF TRUST SECURES A SHARED EQUITY NOTE. THE PROMISSORY NOTE SECURED BY THIS DEED OF TRUST MAY REQUIRE PAYMENT OF PRINCIPAL, INTEREST AND A PORTION OF THE EQUITY UPON THE SALE OR TRANSFER OF THE PROPERTY OR UPON A REFINANCING.

DEED OF TRUST

THIS DEED OF TRUST ("Deed of Trust") is made this ___ day of ________ 200__, among the Trustor,________________________________ ("Owner"), the trustee, Chicago Title Company, a California corporation ("Trustee"), and the San Diego Housing Commission ("Beneficiary"), whose address is 1625 Newton Avenue, San Diego, California, 92113.

BORROWER HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of San Diego, County of San Diego, State of California, described as:

(See Legal Description - Exhibit "A")

which has the address of ____, San Diego, California __________ (herein "Property Address");

TOGETHER with all the improvements now and hereafter erected on the Property, and all easements, rights, appurtenances and rents (subject, however, to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain part of the property covered by this Deed of Trust; and all of the foregoing, together with said property, are hereinafter referred to as the "Property";

TO SECURE to Beneficiary the repayment of the indebtedness evidenced by Owner's promissory note dated _____________, 200__, and extensions and renewals thereof, in the principal sum of ____ U.S. Dollars ($___________) ("Note"), including without limitation the Equity sharing provisions thereof (the term "Equity" shall have the meaning ascribed to it in the Note); the performance of each agreement and covenant of Declaration of Covenants, Conditions and Restrictions, Affordable Housing Agreement and Right of First Refusal ("Declaration") recorded concurrently herewith against the Property; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Owner contained herein.

BORROWER covenants that Owner is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Owner is unencumbered except for encumbrances of record. Owner covenants that Owner warrants, and will defend generally, the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS

Owner and Beneficiary covenant and agree as follows:

1. **Payment of Principal and Interest.** Owner shall promptly pay when due the Principal, including without limitation equity sharing, evidenced by the Note.

2. **Funds for Taxes and Insurance.** To protect the security of the Deed of Trust, Owner agrees to pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto, and all costs, fees and expenses of this Trust.

Should Owner fail to make any payment or fail to do any act as herein provided, then Beneficiary or Trustee, without obligation to do so and without notice to or demand upon Owner and without releasing Owner from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either Beneficiary or Trustee appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Beneficiary under the Note shall be applied by Beneficiary first in payment of amounts due to Beneficiary by Owner, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges, Liens.** Owner shall perform all of Owner's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Owner's covenants to make payments when due. Owner shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments, if any.

5. **Hazard Insurance.** Owner shall keep the improvement(s) now existing or hereinafter erected on the Property insured against loss by fire, hazards included within the terms "extended coverage," and such other hazards as Beneficiary may require and in such amounts and for such periods as Beneficiary may require.

The insurance carrier providing the insurance shall be chosen by Owner subject to approval by Beneficiary, provided that such approval will not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgagee clause in favor of and in a form acceptable to Beneficiary. Beneficiary has the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Owner shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Owner.

If Property is abandoned by Owner, or if Owner fails to respond to Beneficiary within thirty (30) days from the date notice is mailed by Beneficiary to Owner that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. **Preservation and Maintenance of Property.** Owner will keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. Owner shall perform all of Owner's obligations under the declaration of covenants, conditions and restrictions creating or governing the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Beneficiary Security.** If Owner fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, upon notice to Owner, may make such appearances, disburse such sums including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest. If Beneficiary's required hazard insurance is a condition of making the loan secured by this Deed of Trust, Owner shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Owner's and Beneficiary's written agreement or applicable law.

Any amounts disbursed by Beneficiary pursuant to this paragraph, with interest thereon, at the Note rate, will become additional indebtedness of Owner secured by this Deed of Trust. Unless Owner and Beneficiary agree to other terms of payment, such amounts will be payable upon notice from Beneficiary to Owner requesting payment thereof. Nothing contained in this paragraph will require Beneficiary to incur any expense or take any action hereunder.

8. **Inspection**. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary will give Owner notice prior to any such inspection, specifying reasonable cause therefor related to Beneficiary's interest in the Property.

9. **Condemnation**. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. **Owner Not Released; Forbearance by Beneficiary Not a Waiver**. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Owner shall not operate to release, in any manner, the liability of the original Owner and Owner's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Owner and Owner's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound, Joint and Several Liability**. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Owner, subject to the provisions of paragraph 15 hereof. All covenants and agreements of Owner shall be joint and several.

12. **Notice**. Except for any notice required under applicable law to be given in another manner:

(a) any notice to Owner provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail, addressed to Owner at the Property Address; and

(b) any notice to Beneficiary will be given by certified mail, return receipt requested, to Beneficiary's address stated herein or to such other address as Beneficiary may designate by notice to Owner as provided herein.

Any Notice provided for in this Deed of Trust shall be deemed to have been given to Owner or Beneficiary when given in the manner designated herein.

13. **Governing Law, Severability**. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision and, to this end, the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Owner's Copy**. Owner shall be furnished a conformed copy of the Note and this Deed of Trust at the time of execution or after recordation hereof.

15. **Sale of the Property and Equity Sharing**. Upon the first Resale, as defined below, of the Property by the Owner, the Equity, as defined below, shall be shared between the Owner and the Beneficiary as set forth in this Section 15. Notwithstanding the foregoing or anything to the contrary set forth herein, the Equity shall not be shared as set forth in this Section 15 provided that all of the following conditions are met: (i) Owner transfers the Property to a person meeting the definition of "Targeted Household", and is approved as a Targeted Household by the Beneficiary; (ii) the total consideration for such transfer does not exceed the then Maximum Sales Price; and (iii) the purchaser assumes all of the obligations of the Owner under this Deed of Trust, the Promissory Note and the Declaration.

(a) Equity. The term "Equity" shall mean the difference between, the unrestricted fair market value of the Property at the time of the first Resale, as determined by an appraisal approved by the Beneficiary, minus the sum of: (i) the original unrestricted fair market value of the Property at the time of its acquisition by the Owner, as determined by an appraisal approved by the Beneficiary, plus (ii) the actual costs of any Beneficiary approved improvements to the Property.

(b) Resale Defined.

(1) "Resale" means any of the following: (i) the sale, conveyance or transfer of all or any part of the Property or any interest in the Property, (ii) if Owner is not a natural person, the sale, conveyance or transfer of all or any part or any beneficial interest in Owner, (iii) any refinancing of all or any part of the Property, except as provided in 15(b)(2) below, (iv) the failure of Owner to occupy the Property as his, her, or their, primary residence until the earlier of: (A) the expiration of 15 years from the date the Declaration is recorded against the Property and full repayment of the Promissory Note; or (B) the closing of a Resale of the Property, including full repayment of the Promissory Note and payment of the Beneficiary's share of the Equity, (v) the leasing of all or any part of the Property, (vi) a material breach of this Deed of Trust, the Promissory Note or the Declaration, or (vii) the filing of bankruptcy by Owner.

(2) Notwithstanding the foregoing, a refinancing of the Property shall not be considered a Resale, provided either:

(i) The principal balance of Owner's loan after the refinancing, does not exceed the principal balance of Owner's loan before the refinancing, plus reasonable closing costs; or

(ii) Both of the following conditions are met, and provided that the Beneficiary provides advance written consent to Owner of the refinancing: (A) Owner receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of Owner's loan before the refinancing; and (B) such cash is borrowed for the purpose of and is used for improvements to the Property, which improvements are preapproved by the Beneficiary prior to Owner's obtaining the refinancing.

(c) Equity Sharing Upon the First Resale of the Property. In addition to the amounts principal amount of the Note, upon the first Resale of the Property during the first 15 years from the date the Declaration is recorded against the Property, provided the Owner does not sell the Property to a person that qualifies as a Targeted Household for a total consideration not in excess of the Maximum Purchase Price as set forth in the Declaration, the Beneficiary and the Owner shall share the Equity in accordance with the following table:

Length of Ownership at the Time of Sale	Share of Equity to Owner
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93

Year 15 or after	100%

(d) Pay-Off of the Promissory Note. The Promissory Note shall be due and payable in full upon the earlier of: (i) the first Resale (unless such Resale meets the requirements set forth in the second sentence of Section 15, above); or (ii) the Property is no longer owner occupied; or (iii) thirty (30) years from the date first set forth above. Prepayment of the Promissory Note shall not effect the obligation to share the Equity as set forth in Section 15(c), above.

(e) Inclusionary Housing Fund. All funds collected pursuant to this Section 3 shall be deposited by the Beneficiary into the Inclusionary Housing Fund.

(f) Resale Must be for Fair Market Value. Owner shall notify the Beneficiary in writing of Owner's intent to sell the Property prior to entering into any agreement to sell the Property and the Property shall not be sold for less than its fair market value.

(g) City's Right of First Refusal. The City shall have the first right of refusal to purchase the Property prior to the first Resale. If the City elects to exercise its first right of refusal it shall pay a purchase price for the Property Unit equal to the unrestricted fair market value of the Property as determined by an appraiser selected by City in its sole discretion. In such event, all of the provisions of this Section 15, including without limitation, the equity sharing provisions and additional payment provision, shall continue to apply with respect to the Property.

NON-UNIFORM COVENANTS

Owner and Beneficiary further covenant and agree as follows:

16. Acceleration, Remedies. Upon Owner's breach of any covenant or agreement of Owner in this Deed of Trust, including without limitation the covenants to pay when due any sums secured by this Deed of Trust, Beneficiary, prior to acceleration, shall give notice to Owner as provided in paragraph 12 hereof specifying:

(a) the breach;

(b) the action required to cure such breach;

(c) a date, not less than ten (10) days from the date the notice is mailed to Owner, by which such breach must be cured; and

(d) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property.

The notice shall further inform Owner of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Beneficiary, at Beneficiary's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees.

If Beneficiary invokes power of sale, Beneficiary shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Owner, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order:

(1) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence;

(2) to all sums secured by this Deed of Trust; and

(3) the excess, if any, to the person or persons legally entitled thereto.

17. Owner's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust due to Owner's breach, Owner shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if:

(a) Owner pays Beneficiary all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred;

(b) Owner cures all breaches of any other covenants or agreements of Owner contained in this Deed of Trust;

(c) Owner pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Owner and enforcing Trustee, including, but not limited to, reasonable attorneys' fees; and

(d) Owner takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Owner's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired.

Upon such payment and cure by Owner, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. As additional security hereunder, upon acceleration under paragraph 16 hereof or abandonment of the Property, Beneficiary, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received.

19. Reconveyance. Upon satisfaction of both of the following conditions: (i) payment of all sums secured by this Deed of Trust and (ii) termination of the Declaration, Beneficiary shall request Trustee to reconvey the Property and will surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. PAYMENT OF THE NOTE SHALL NOT AFFECT BORROWER'S OBLIGATION TO SHARE THE EQUITY WITH BENEFICIARY AS PROVIDED HEREIN AND SHALL NOT TERMINATE THIS DEED OF TRUST, OR OTHERWISE AFFECT THE TERMS OF THIS DEED OF TRUST.

20. Substitute Trustee. Beneficiary, at Beneficiary's option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original lender, Trustee and Owner, the book and page where this instrument is recorded, and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

21. Request for Notices. Owner requests that copies of the notice of sale be sent to Owner's address which is the Property Address.

22. Statement of Obligation. Beneficiary may charge a fee not to exceed Fifty Dollars ($50.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

23. Covenants, Conditions and Restrictions. The Property is subject to the Declaration, which is not attached hereto but is incorporated by reference. Owner acknowledges receipt of said Declaration and agrees, for himself, his heirs, successors and assigns to be bound by the same.

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24. **Request for Notice of Default**. Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary's address, as set forth on page 1 of this Deed of Trust, as provided by Section 2924b of the Civil Code of California.

IN WITNESS WHEREOF, Owner has executed this Deed of Trust.

Date: ________ SIGSBEE ROW LLC
Owner: ________

Date: ________ ________
Owner: ________

//

RECORDING REQUESTED BY: 14 70P 2W

STEWART TITLE OF CALIFORNIA

AFTER RECORDING RETURN TO:
Stewart Title of California, Inc.
7676 Hazard Ctr Drive # 1400
San Diego, CA 92108
Attn: Leslie Hopkins, DRE

2,59 278299

APN 538-050-36-00

DOC # 2010-0181519

APR 13, 2010 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 225.00 WAYS: 2

7678 **PAGES:** 70

SPACE ABOVE RESERVED FOR RECORDER'S USE

FIRST AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC.

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FIRST AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS

BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation

THIS FIRST AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this [________] of [__________], 2010, amends and fully restates that certain Declaration of Establishment of Covenants, Conditions and Restrictions recorded on May 23, 2007 as document number 2007-0350188 in the Official Records of the San Diego County Recorder's office ("**Superseded Declaration**") and is adopted by 1702 National Ave, LLC, a California limited liability company, hereinafter referred to as the "**Declarant**," is made with reference to the following facts:

WHEREAS, Declarant has assumed the property rights of the prior owner and the originally named Declarant, Sigsbee Row, LLC, a California limited liability company, as to certain real property ("**Property**") located in the City of San Diego, San Diego County, State of California, more particularly described as follows:

> Lot 1 of Sigsbee Row, in the City of San Diego, County of San Diego, according to Map thereof No. 15442, filed in the Office of the County Recorder, of San Diego County on September 20, 2006.

WHEREAS, no Residential Units have been sold in the Project to individual Owners, and Declarant has obtained approval of the DRE and any other state administrative agency having regulatory jurisdiction over the Project, therefore pursuant to Section 19.2 of the Superseded Declaration, the Declarant has the right and authority to amend and replace the Superseded Declaration;

WHEREAS, it is the desire and intention of Declarant to assume the rights and duties of Sigsbee Row, LLC under the Superseded Declaration, and to amend and fully replace the Superseded Declaration with this Declaration;

WHEREAS, it is the desire and intention of Declarant to sell and convey interest in said real property to various individuals and subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens, and charges between it and the acquirees or users of said property as hereinafter set forth.

WHEREAS, it is the desire and intention of Declarant to create a "**Condominium Project**," as defined in *California Civil Code §1351(f)*, by improving said real property by constructing Condominiums thereon consisting of separate interests in "**Residential Units**," as defined in Section

1.59 herein and undivided interests in all or portions of the real property.

WHEREAS, the development of the Property shall be referred to as the "**Project**" as defined in Section 1.56 herein. The Project is expected to be developed in a single phase. There is no assurance that all of the Condominium Project and/or the proposed phase will be completed as planned.

WHEREAS, the Owner of a Condominium will receive a separate interest in an undivided Unit and an undivided one-fourteenth (1/14th) interest in common in the Common Area of the Project in which the Residential Unit is located. Each Condominium shall have appurtenant to it a membership in the BridgeView Lofts Homeowners' Association, Inc., a California nonprofit mutual benefit corporation, which shall own the Common Area.

WHEREAS, Declarant intends by this Declaration to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners of Residential Units.

NOW THEREFORE, BE IT RESOLVED, that pursuant to the provisions of *California Civil Code §§1350-1373* (known as the "Davis-Stirling Common Interest Development Act") and *California Civil Code § 1468*, Declarant hereby declares that the property, Improvements, appurtenances, and facilities described herein and as shown on the Condominium plan ("**Condominium Plan**") to be recorded in connection with this Project, shall be held, conveyed, mortgaged, divided, encumbered, hypothecated, leased, rented, used, occupied, sold, and improved only upon and subject to the following declarations, covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, and charges, all of which are imposed as equitable servitudes, all of which are hereby declared, established, expressed, and agreed: (1) to be in furtherance of a plan for the Project and sale of individual Residential Units in the Project which constitutes a Condominium Plan, as defined in *California Civil Code § 1351*; (2) to be for the benefit and protection of the Project, its desirability, value, and attractiveness; (3) to be for the benefit of the Owners of the Residential Units in the Project; (4) to run with the land and be binding upon all parties having or acquiring any right, title, or interest in the Project or any portion thereof; (5) to inure to the benefit of every portion of the Project and any interest therein; and (6) to inure to the benefit of and be binding upon each successor and assignee in interest of each Owner and of Declarant. Any conveyance, transfer, sale, assignment, lease, or sublease of a Residential Unit in the Project made by Declarant or any successor or assignee in interest of Declarant or any other Owner, will and hereby is, deemed to incorporate by reference the provisions of this Declaration, including, but not limited to, covenants, conditions, restrictions, limitations, grants of easements, right-of-way, rights, liens, charges, and equitable servitudes contained herein. The provisions of the Declaration shall be enforceable by Declarant, any Owner, or his or her successor in interest, and shall also be enforceable by the Association, its Board of Directors, or any Person, firm, corporation, or other association duly authorized by the Association or its Board of Directors to enforce all or any one or more of the provisions hereof and by the City of San Diego to the limited extent provided herein.

ARTICLE I
DEFINITION OF TERMS

WHENEVER USED in this Declaration, the following terms shall mean:

1.1 "Architectural and Landscaping Rules" shall mean the separate and independent document adopted by the Board and incorporated herein by reference which sets forth the guidelines regarding Improvements of a Residential Unit.

1.2 "Architectural Plans" shall have the meaning set forth in Section 10.15(a) herein.

1.3 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.4 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, and managing the Project, which is to be paid by each Owner as determined by the Association, including, but not limited to, Regular Assessments, Special Assessments, Individual Special Assessments, and Emergency Assessments, as hereinafter defined.

1.5 "Assessment Lien" shall mean the recorded Notice of Delinquent Assessment with the county recorder of a lien against the Residential Unit Owner's interest in the Project, which includes the past due assessment, plus any costs of collection, late charges, and interest assessed.

1.6 "Association" shall mean an incorporated association, consisting of all Owners of Residential Units in the Project, which entity shall have the duty of maintaining, operating, and managing the Common Area of the Project in the manner and to the extent provided for herein. Each Owner shall become a Member of BridgeView Lofts Homeowners' Association, a California nonprofit mutual benefit corporation, contemporaneously with the acquisition of his or her Residential Unit, without further documentation of any kind.

1.7 "Association Maintenance Area" shall mean the portion of the Project which shall be maintained by the Association and is described in the Maintenance Responsibility Chart attached hereto as Exhibit "A."

1.8 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.9 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.10 "City" shall mean the City of San Diego, a California municipal corporation.

1.11 "Claim" shall have the meaning set forth in Section 11.14(b) herein.

1.12 "Committee" shall mean the Architectural Review Committee, as may sometimes be referred to as the Architectural Committee.

1.13 "Common Area" shall mean the entire Project except the individual Residential Units and Exclusive Use Areas. The Common Area includes the bearing walls located within a Residential Unit and all structural components within a Residential Unit which may be required for the support of the building within which the Residential Units are located, except for the finished surfaces thereof. Any Utilities Facilities serving two (2) or more Residential Units that are located inside of the perimeter Common Area walls or dropped ceilings or otherwise in an area designated as Common Area are a part of the Common Area, as shown on the Condominium Plan.

1.14 "Common Expense" shall mean and include the actual and estimated expenses of operating the Common Area and any reasonable reserve for such purposes as found and determined by the Board, and all sums designated Common Expenses by or pursuant to the Governing Documents.

1.15 "Common Interest" shall mean the proportionate undivided interest in and to the Association Common Area, which is a part of each Condominium as set forth in this Declaration.

1.16 "Condominium" shall mean an estate in real property as defined in *California Civil Code §§ 783 and 1351(f)*, consisting of an undivided interest in the Association Common Area and a separate interest in space called a Residential Unit.

1.17 "Condominium Plan" or "Plan" shall mean the recorded three-dimensional plan of the Condominiums built or to be built on the property in the Project, which identifies the Association Common Area and each separate interest pursuant to *California Civil Code § 1351*, which was recorded on the 23 day of May, 2007, as Document Number 2007-0350187 in the official records for the County Recorder for the County of San Diego, State of California.

1.18 "County" shall mean the County of San Diego, California.

1.19 "Declarant" shall mean and refer to 1702 National Ave, LLC, a California limited liability company, and any successors or assigns that expressly assume the rights and duties of the Declarant under this Declaration in a recorded written document.

1.20 "Declaration" shall mean and refer to this enabling Declaration, as amended or supplemented from time to time.

1.21 "Delinquent Assessment Collection Policy" shall mean the separate and independent document adopted by the Board and incorporated herein by reference which sets forth the policy for the collection of delinquent Assessments.

1.22 Intentionally Deleted.

1.23 "Directors" shall mean members of the Board of Directors of the Association.

1.24 "DRE" shall mean the California Department of Real Estate and any successors thereto.

1.25 "Eligible Mortgage Holders" shall mean a First Lender who has requested notice of certain matters from the Association.

1.26 "Eligible Insurer" or **"Guarantor"** shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association.

1.27 "Emergency Assessments" shall mean (i) an extraordinary expense required by an order of a court; (ii) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; and (iii) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under *California Civil Code § 1365.*

1.28 "Emergency Fire Access" shall mean that area of Residential Unit 7 designated on the Condominium Plan designated as an emergency fire access.

1.29 "Exclusive Use Area" shall mean those areas defined in Sections 1.30 through 1.38 below, which shall be collectively referred to herein as Exclusive Use Areas.

1.30 "Exclusive Use Entry" shall mean the area designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUE.

1.31 "Exclusive Use Garage" shall mean the garage designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUG.

1.32 "Exclusive Use Garage Entry" shall mean the garage entry designated to a particular Resident Unit as an exclusive use area as shown on the Condominium Plan as EUGE.

1.33 "Exclusive Use Grated Deck" shall mean the grated deck designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUGD.

1.34 "Exclusive Use Planter" shall mean the area designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUP.

1.35 "Exclusive Use Stairs" shall mean the stairs designated to a particular Residential

Unit or Units as an exclusive use area as shown on the Condominium Plan as EUS.

1.36 "Exclusive Use Walkway" shall mean the walkway designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUW.

1.37 "Exclusive Use Wood Deck" shall mean the wood deck designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUWD.

1.38 "Exclusive Use Yard" shall mean the yard designated to a particular Residential Unit as an exclusive use area as shown on the Condominium Plan as EUY.

1.39 "Family" shall mean one (1) or more natural persons related to each other by blood, marriage, or adoption, or one (1) or more natural persons not all so related, but who maintain a common household in a Residence.

1.40 "First Lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Residential Unit.

1.41 "Governing Documents" shall mean this Declaration, as amended from time to time, the Exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including the Map and/or Certificate of Compliance in lieu thereof, the Articles, the Bylaws, the Condominium Plan, and the Rules and Regulations, as adopted by the Board or the Association and amended from time to time.

1.42 "Government Approval" shall mean the approvals granted by the City for Map 15442, recorded on September 20, 2006, in the office of the County Recorder for the County of San Diego.

1.43 "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including, but not limited to, entry gates, private streets, driveways, parking areas, fences, screening walls, block walls, retaining walls, landscaping, planted trees, shrubs, sprinkler pipes, residences, and garages.

1.44 "Individual Special Assessment" shall mean and refer to a charge against a particular Residential Unit made for the purpose of obtaining reimbursement of certain expenditures of the Association.

1.45 Intentionally Deleted.

1.46 "Maintenance Responsibility Chart" shall mean the chart attached hereto as Exhibit "A" outlining the responsibilities of the Owners and the Association to the Common Area.

1.47 **"Member"** shall mean and refer to a Person entitled to membership in the Association as provided herein.

1.48 **"Mortgage"** shall mean a mortgage, deed of trust, assignment of rents, issues and profits, or other proper instrument including, without limitation, those instruments and estates created by sublease or assignment, given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.49 **"Mortgagee"** shall include a beneficiary or a holder of a deed of trust as well as a Mortgagee.

1.50 **"Mortgagor"** shall mean a person who encumbers his or her Condominium with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.

1.51 **"Notice of Noncompliance"** shall have the meaning set forth in Section 10.15(g) herein.

1.52 **"Officer"** shall mean the Association's President, Vice-President, Secretary, Treasurer, and such other officers which may be necessary in the above-referenced Officers' individual collective opinions.

1.53 **"Owner" or "Owners"** shall mean the record holder of fee simple title to a Condominium, expressly excluding persons having any interest merely as security for the performance of an obligation until such person obtains fee title thereto, and those parties who have leasehold interest in a Condominium. If a Condominium is sold under a recorded contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract. The term "Owner" or "Owners" shall include Declarant, so long as any Residential Unit remains unsold and title thereto is vested in Declarant.

1.54 **"Person"** shall mean a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.55 **"Policies and Procedures for Enforcement of the Governing Documents"** shall mean the separate and independent document adopted by the Board and incorporated by reference herein which sets forth the policies and procedures for enforcing the Governing Documents.

1.56 **"Project"** shall mean and refer to the entire real property described in this instrument as the Property, including all structures and improvements erected or to be erected thereon, all subject to encumbrances, including, without limitation, access, landscaping, utility, and maintenance easements.

1.57 **"Reasonable Costs of Collection"** shall mean (i) reasonable charges imposed to defray the cost of preparing and mailing demand letters; (ii) reasonable attorney's fees incurred; (iii) recording costs; (iv) costs incurred with title companies or foreclosure service providers; and (v) costs associated with small claims court actions.

1.58 **"Regular Assessment"** shall mean that portion of the cost of maintaining the Project, which is to be paid by each Member as determined by the Association in accordance with this Declaration and the Bylaws.

1.59 **"Residential Unit"** shall mean that certain space within the Project of which an Owner has an undivided interest, as further defined in Section 2.5(a) below.

1.60 **"Residential Unit Designation"** shall mean the number, letter, or combination thereof, or other official designation(s) shown on the Plan. Each Residential Unit is identified by a separate number on the Plan.

1.61 **"Rules and Regulations"** shall mean and refer to those certain Rules and Regulations and amendments thereto adopted from time to time by the Board of Directors of the Association and/or Members thereof.

1.62 **"Separate Interest"** shall mean a separate interest in space as defined in Section 1351(l) of the California Civil Code and shall mean the individual Residential Unit defined in Section 1.59. Each Separate Interest shall be a separate freehold estate.

1.63 **"Singular and Plural"** the singular and plural number, and the masculine, feminine, and neuter gender shall each include the other where the context requires.

1.64 **"Special Assessment"** shall mean a charge to be paid by each Member to be determined in accordance with this Declaration and the Bylaws for the purpose of defraying, in whole or in part, the Common Expenses of the Association for any fiscal year.

1.65 **"Utilities Facilities"** shall have the meaning set forth in Article XII herein.

ARTICLE II
DESCRIPTION OF PROJECT, DIVISIONS OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 **Plan Best Authority.** The following description is intended for information purposes only, and in the event of any conflict between this description and the Plan, said Plan should be deemed to conclusively control.

2.2 **Property Description.** The Project is a Condominium Project consisting of the land, the Condominiums, and all other Improvements located thereon. The Project consists of fourteen (14) Residential Units and the Common Area(s) shown on the Condominium Plan. Reference is made to the Condominium Plan for further details.

2.3 **Property Boundaries.** The Project has within its boundaries various Residential Units, as shown and described on the Plan.

2.4 **Division of Property.** The Project is divided as follows:

(a) **Residential Units.** Each of the Residential Units as separately shown, numbered, and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Residential Unit, each of those spaces being defined and referred to herein as a "**Residential Unit**." Walls located along the exterior portion of a Residential Unit that are shared with another Residential Unit are Common Area, not part of the Residential Unit, except for the finished surfaces thereof and the maintenance obligations relating to such Common Area wall are set forth on Exhibit "A" hereto. Each Residential Unit includes the utility installations (i) located wholly within its boundaries that the Owner has exclusive use of, (ii) which solely service the Residential Unit, (iii) are located on the roof of the Residential Unit or (iv) located in the Exclusive Use Yard of the Residential Unit, including, without limitation: hot water heaters, lighting fixtures, cabinetry, and heating or air conditioning units which are located within the Residential Unit they serve. Each Residential Unit includes: (i) any and all Exclusive Use Areas designated on the Plan as being appurtenant to the Residential Unit; (ii) any attached or unattached garage designated as an Exclusive Use Garage for the specific Residential Unit; and (iii) the air space so encompassed. The Residential Unit does not include those areas and those things that are defined as Common Area in Section 1.13. Each Residential Unit shall have appurtenant to it nonexclusive rights for ingress, egress, and support through the Common Area subject to the rights of each Owner in any Exclusive Use Areas. Notwithstanding anything to the contrary herein, Owners shall be responsible for maintaining and insuring all portions of the Residential Unit as is more specifically set forth on Exhibit "A" hereto.

(b) **Common Area.** Each Owner shall have, as appurtenant to his Residential Unit, a one-fourteenth (1/14) undivided easement interest as either a shared maintenance obligation easement or a shared use interest in the Common Area as depicted on the Plan. Nothing herein shall give the Owner of a Residential Unit the right to use, in any manner, an area designated as a shared maintenance obligation that is located on another Residential Unit.

(c) **Exclusive Use Area.** Exclusive Use Areas shall be appurtenant to each Residential Unit in the Project which are designated on the Condominium Plan; responsibility and maintenance of which is designated in the Maintenance Responsibility Chart attached hereto as Exhibit "A." The Owner the Residential Unit for which the Exclusive Use Area is appurtenant to shall maintain any and all liability insurance for such Exclusive Use Areas.

(d) **Utility Improvement and Facility Access.** Declarant hereby establishes and reserves for the benefit of the Association easements in gross over the Property and each Residential

Unit for purposes of installing, repairing and maintaining utility improvements for water, electrical, heating, ventilating and air conditioning, and telecommunications systems which serve such Owners' Residential Units; provided, however, that such utility improvements, and any wires, conduits, or other facilities or equipment related thereto, must be encased within continuous conduit and may not be installed within any portion of the other Owner's Residential Unit other than (a) that portion of such Residential Unit which is not more than 1 inch from the bottom of the structural ceiling of such Residential Unit or (b) in the event that a "drop" or "false" ceiling has been installed in such Residential Unit, that portion of the Residential Unit which is above the drop ceiling. Declarant hereby establishes and reserves for the Owners of each Residential Unit within the Project an easement appurtenant, over each other Residential Unit for purposes of installing, repairing and maintaining utility improvements for water, electrical, heating, ventilating and air conditioning, and telecommunications systems which serve such Owners' Residential Unit; provided, however, that such utility improvements, and any wires, conduits, or other facilities or equipment related thereto, must be encased within continuous conduit and may not be installed within any portion of the other Owner's Residential Unit other than (a) that portion of such Residential Unit which is not more than 1 inches from the bottom of the structural ceiling of such Residential Unit or (b) in the event that a "drop" or "false" ceiling has been installed in such Residential Unit, that portion of the Residential Unit which is above the drop ceiling. Nothing in this Section 2.5(d) shall require, however, any install, repair, or maintenance by Association. Any entry by an Owner or Association, or their respective employees, agents, contractors, invitees, licensees and assigns (hereafter **"Permitees"**) into any other Owner's Residential Unit pursuant to this Section 2.5(d) shall further be subject to the following provisions:

(i) Prior Notice. Any entry into a Residential Unit by any other Owner or Association pursuant to the easements reserved in this Section 2.5(d) may be made only upon at least five (5) business days advance written notice (the "Entry Notice") to the Owner of the Residential Unit to be entered, unless the Owner of the Residential Unit to be entered consents in writing to an entry after a shorter notice period. Upon receipt of such Entry Notice, the Owner of the Residential Unit to be entered shall have the right to designate an alternative date and time for such entry either during or after normal business hours, provided that the designated date shall in no event be later than five (5) business days after delivery of the applicable Entry Notice. In the event that the Owner or Permittees of the Residential Unit to be entered fails to designate an alternative date and time for such entry within three (3) business days after delivery of the Entry Notice, the party desiring to enter such Residential Unit may enter the Residential Unit at the date and time designated in the Entry Notice. Notwithstanding the foregoing, prior notice shall not be required for any emergency entry necessary to prevent material damage to the Residential Unit to be entered or any other Residential Unit within the Project or any personal property located therein.

(ii) Owner's Right to be Present. Without limiting the foregoing, the Owner of the Residential Unit to be entered shall have the right to be present, or to have a designated representative present, during any entry into such Owner's Residential Unit pursuant to this Section 2.5(d)(i). In the event that the Owner of the Residential Unit to be entered fails to have a representative present at the date and time designated in the Entry Notice (or such alternative date and time as may be designated by the Owner of the Residential Unit to be entered pursuant to the preceding paragraph), then such Owner shall be deemed to have waived its right to have a representative present during such entry.

(iii) Insurance Requirements; Conduct During Entry. Any entry into an Owner's Residential Unit by Association or any other Owner pursuant to the rights and easements reserved in this Section 2.5(d) shall be conducted in a manner so as to minimize any damage to such Residential Unit or disruption of the operations conducted within such Residential Unit in accordance with this Declaration. All contractors or other persons entering any Owner's Residential Unit pursuant to the easement granted pursuant to this Section 2.5(d) shall maintain in effect general commercial liability insurance providing coverage against claims which arise out of or result from the exercise of such easement. Such policies shall name the Owner of the Residential Unit to be entered as an additional insured and shall have a single per occurrence limit of not less than One Million and No/100 Dollars ($1,000,000.00). The Residential Unit to be entered shall, following completion of the work to be performed by the entering party, be left in substantially the same condition as existed immediately preceding such entry and the Owner of the Residential Unit for whose benefit such entry occurred shall be solely responsible for repairing any damage to the Residential Unit caused by such entry

2.5 **<u>Owner's Easements of Enjoyment.</u>** Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to every Residential Unit, and subject to the following provisions:

(a) The Association's right to reasonably limit the number of guests and tenants of the Owners using the Common Area;

(b) The Association's right to establish uniform Rules and Regulations for the use of the Common Area;

(c) The right of the Declarant and Declarant's sales agents, representatives, and prospective purchasers to the nonexclusive use of the Common Area, without cost, for access, ingress, egress, use, and enjoyment, including placement of signs, flags and other sales or promotional material, in order to show and dispose of the Residential Units as provided herein, until the earlier of: (i) the date on which the close of escrow has occurred on the last Residential Units which are subject to this Declaration for sale or other transfers from Declarant to other persons; or (ii) the date which is five (5) years following the date of issuance of the original Final Public Report for the Project; provided, however, that such use shall not unreasonably interfere with the rights and enjoyment of the other Owners as provided herein;

(d) The Association's right to reconstruct, replace, or refinish any Improvements or portion thereof on the Common Area in accordance with the original design, finish, or standard of construction of such Improvements, or of the general Improvements within the Project, as the case may be;

(e) The Association has the right to suspend the voting rights of an Owner (i) for any period during which any Assessment against his or her Residential Unit remains unpaid, and (ii) for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations after notice and a hearing by the Board of Directors of the Association which satisfies *California Corporations Code § 7341.*

(f) The Association has a right to impose a monetary penalty upon an Owner to reimburse the Association for costs incurred by such Owner to repair any damage to the Common Area or facilities as a result of or condition caused by violation of any of the limitations, restrictions, conditions, and covenants by said Owner or his/her invitees, guests or family members. This right shall be in addition to charges imposed against an Owner because of delinquent Assessments and/or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorney fees) in its effort to collect delinquent Assessments.

2.6 **<u>Fire Access Easement.</u>** The Residential Unit 7 has an Emergency Fire Access continuous with the Residential Unit. Said Emergency Fire Access shall be for the Exclusive Use of the Owners of Residential Unit 7, subject to a right of access for and by any and all emergency responding personnel, including, but not limited to, police, ambulance, and fire department. Under no circumstances shall the Emergency Fire Access be blocked or otherwise used by the Residential Unit Owner in any manner inconsistent with the purpose for the access.

2.7 **<u>Partition Prohibited.</u>** The Common Areas shall remain undivided as set forth above. Except as provided by *California Civil Code § 1359* or authorized under Article XIV. No Owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph but partition of title to a single Condominium is prohibited.

ARTICLE III
<u>MEMBERSHIP IN OWNERS' ASSOCIATION</u>

3.1 **<u>Association to Manage Common Area.</u>** The Owners in common through their membership in the Association shall control the Common Area. The Association shall have the responsibility to manage and maintain or cause to be maintained all of the Common Area in a state of high quality so as to keep the whole Project in a first class condition and in a good state of repair. Any future modifications to the Common Area must meet the requirements of the California American with Disabilities Act for accessibility.

3.2 **<u>Membership Qualification.</u>** The Owners shall constitute an Owners' Association. Each Owner of a Residential Unit, including Declarant, if applicable, shall be a Member of the Association. Membership in the Association shall be appurtenant to Residential Unit ownership, and each Owner of a Residential Unit shall automatically be a Member of the Association. Ownership of a Residential Unit within the Project shall be the sole qualification for membership in the Association. Membership shall not be denied to any person because of race, sex, color, religion, creed, marital status, sexual orientation, national origin, ancestry, familial status, source of income, or conditions of physical or mental disability. Notwithstanding the foregoing, each Residential Unit, without regard to the number of Members as Owners of that Residential Unit, shall have only one (1) vote as set forth in Section 5.1 of this Declaration.

3.3 Transferred Membership. Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium including, without limitation, a transfer on the death of an Owner, membership passes automatically with the title to the Condominium to the transferee.

A Mortgagee does not have membership rights until it obtains title to the Condominium by foreclosure sale or deed in lieu of foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4 Administration of Project. The Owners, and each of them, together with all parties bound by this Declaration covenant and agree that the administration of the Project shall be in accordance with California law, the provisions of this Declaration, the Bylaws, and such Rules and Regulations as may, but which are not required to, be adopted by the Board and amendments, changes, and modifications thereto, as may come into effect from time to time. In the event of any inconsistency between California law, the provisions of this Declaration and the provisions of the Bylaws, or said Rules and Regulations, if any, pursuant to Section 11.13, California law shall prevail, and then provisions of this Declaration shall prevail. To the extent to which the provisions of the Bylaws and Rules and Regulations are consistent with this Declaration, each and every provision in the Bylaws and the Rules and Regulations are incorporated herein by this reference and made a part hereof as though set forth verbatim.

3.5 Indemnification for Performance of Duties. Every Director, Officer, and Member of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities (including attorney's fees) actually or necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an Officer or Member of the Association, whether or not he continues in such capacity at the time of the incurring or imposition of such costs, expense, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceedings, investigation, or inquiry to be liable for willful misconduct or negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, to which a determination has been made of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such Director, Officer, or Member may be entitled as a matter of law and shall inure to the benefit of the legal representative of such Director, Officer, or Member.

ARTICLE IV
MEETINGS OF THE OWNERS' ASSOCIATION

4.1 Organizational Meetings. The Members of the Association shall hold an organizational meeting, which shall be the first annual meeting of the Association, not later than forty-five (45) days after close of escrow has occurred on fifty-one percent (51%) of the Residential Units authorized for sale under the Final Subdivision Public Report; however, notwithstanding the foregoing, in no event shall the meeting be held later than six (6) months after the closing of the sale of the first Residential Unit, at which time a Board of Directors shall be elected by a vote of the Members of the Association. All positions on the Board shall be filled at that election. Prior to the organizational meeting, the initial board named by Declarant shall manage the affairs of the Association.

4.2 Annual and Special Meetings. An annual meeting of Owners shall be held as set forth in the Bylaws. All residents of the Project may attend, but those who are not Members may not participate or vote at the meeting.

Special meetings of the Members of the Association shall be promptly called by the Board upon: (1) the vote for such a meeting by a majority of a quorum of the Board; or (2) receipt of a written request for a special meeting signed by Members representing at least five percent (5%) of the total voting power of the Association. Notice of meetings shall be as set forth in Section 4.4 of the Bylaws, or as may otherwise be required or permitted by California law.

4.3 Quorum. A quorum for the transaction of business at a meeting of Members, through presence in person, shall be as set forth in Section 4.6 of the Bylaws

ARTICLE V
MEMBERS' VOTING RIGHTS

5.1 Owner Voting Rights. Each Residential Unit, regardless of the number of Owners thereof, shall be represented in the Association by only one (1) vote. The vote for each Residential Unit may be cast only as a unit by the Owners(s) thereof.

5.2 No Proxies. Proxies shall not be accepted by the Association; however, Owners are entitled to vote by secret written ballot.

5.3 Commencement of Right to Vote. The voting rights attributable to each Residential Unit shall not vest until Assessments against each Residential Unit have been levied by the Association. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

5.4 **Membership Classes.** The Association shall have two (2) classes of voting Membership.

(a) **Class A Members**. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Residential Unit owned. When more than one (1) person holds an interest in any Residential Unit, all such persons shall be Members. The vote for such Residential Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Unit.

(b) **Class B Members**. Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Unit owned. The class B membership shall cease to exist and irreversibly converted to class A membership on the happening of the earliest of the following:

(1) The date upon which the close of escrow occurs for the eleventh (11^{th}) Residential Unit within the Project to an Owner other than Declarant; or

(2) The second anniversary of the first close of escrow of a Residential Unit in the Project.

(c) **Majority Vote Requirements.** 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 bare class A voting power, or

(2) After conversion to all class A memberships, the required vote is a majority of the total voting power of the Association and the prescribed majority of the total voting power of Members other than Declarant.

5.5 **Joint Owner Votes**. The voting rights for each Residential Unit may not be cast on a fractional basis. If the joint owners of a Residential Unit are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercised the voting rights of a particular Residential Unit, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Residential Unit. If more than one (1) person or entity exercises the voting rights for a particular Residential Unit, their votes shall not be counted and shall be deemed void.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

6.1 **Duties.** In addition to the duties enumerated in the Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

(a) **Maintenance**. The Association is responsible for the care and maintenance of those components of the Project designated for maintenance by the Association on the Maintenance Responsibility Chart, attached as Exhibit "A" hereto and any other areas required to be maintained by the Association, by the City, or under the Plan. The Association shall not be responsible for maintaining any Improvements located within an individual Residential Unit except as specifically set forth in the Maintenance Responsibility Chart or in this Declaration.

(1) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his guests, tenants, or invitees or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner an Individual Special Assessment for reimbursement of such payment, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his guests, tenants, or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof as an Individual Special Assessment to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

(2) The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of occupants of a Residential Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, pursuant to the procedures described in *California Civil Code § 1364(d)* or any successor statute thereto. The costs of any temporary relocation shall be borne by each Owner of a Residential Unit who is required to temporarily relocate.

(3) Landscaping shall include regular fertilization, irrigation, pruning, and other prudent garden management practice necessary to promote a healthy weed-free environment for optimum plant growth. The Association shall remove and replace all dying or dead vegetation.

The Association shall take appropriate steps to maintain the irrigation system for the landscaping and to prevent damage resulting from misdirected and/or excessive watering. The Association shall have the right, but not the obligation to enter any Exclusive Use Yards and Exclusive Use Planters to make any necessary repairs and maintenance to the irrigation system. Owners shall be responsible for maintaining and landscaping the Exclusive Use Yards and Exclusive Use Planters.

(4) The Association shall be responsible for the periodic maintenance, testing, repair, and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (excluding smoke detectors located inside the Residential Units). The Owner of a Residential Unit is responsible for the maintenance and repair of all sprinkler lines that serve the individual Residential Unit. Maintenance shall include periodic testing of such equipment. Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Residential Unit or within the Project.

(5) In order to reduce the presence of mold, fungi, spores, pollens, and other botanical substances, or other allergens (collectively "**Mold**"), within the Common Area, the Association shall inspect the exterior of the Residential Units and the Common Area Improvements not less frequently than annually to check for water leaks or other breaches of the watertight integrity of the Improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall take reasonable corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(6) Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Residential Unit as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

(7) In the event of any water leak or overflow from any Residential Unit that damages any Common Area or other Residential Unit, the Owner and occupants of the Residential Unit that is the source of the water leak or overflow (the "**Responsible Owner**") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the Residential Unit to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association, and the Association may levy an Individual Special Assessment to recover the cost. If the damage may be covered by insurance maintained by the Association, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner.

(8) In the event of any maintenance, repair, replacement or other such work which is the obligation of the Association and such required work requires the relocation of any Owner or their personal belongings, the costs of any relocation shall be borne by each Owner of a Residential Unit who is required to relocate.

(b) **Inspection and Maintenance Guidelines**. The Declarant has provided the Association and each Owner with the inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules for the inspection and maintenance of the Improvements within the Project ("**Maintenance Guidelines**"). When an Owner transfers a Residential Unit, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Residential Unit on or before the date of the transfer of title. Replacement copies of the Maintenance Guidelines may be obtained from the Association at Association's principal place of business or as may otherwise be designated by the Board. Declarant may charge a reasonable fee for providing replacement copies of the Maintenance Guidelines. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area Improvements and landscaping that the Association is required to maintain under this Declaration, and any other Improvements outside of the Common Area, which the Association has the responsibility to maintain. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines. The Board periodically and at least once every three (3) years shall review and update the Maintenance Guidelines.

(c) **Insurance**. The Association shall maintain any insurance coverage required by the Section 5.3 of the Bylaws, this Section 6.1(c) and as may otherwise be required by law, such as workmen's compensation insurance and such policies specifically set forth herein. At least annually, the Board of Directors shall review each insurance policy maintained by the Association to ensure compliance with this Section and sufficiency of such coverage. Each insurance policy maintained by the Association shall (i) include each Unit Owner and each Unit Owner's First Mortgagee, if any, as beneficiaries of such policy with certificates of insurance issued upon request, and (ii) include that such policy cannot be cancelled without at least ten (10) days prior written notice to the Association and each holder of First Mortgage listed in such policy:

(1) Association shall maintain a master or blanket type policy of property insurance covering all of the Common Areas, including Exclusive Use Areas, fixtures and personal property owned by the Association (but excluding land, foundation, excavation and other items normally excluded from coverage), in an amount equal to one hundred percent (100%) of the current replacement cost of the Project (excluding the excludable items), or as near as possible to replacement cost as is insurable. Such policy shall include the "Special Condominium Endorsement" or its equivalent and shall name each Unit Owner and Mortgagor as additional beneficiaries of the policy.

(2) Association shall maintain comprehensive general liability insurance coverage covering all of the Common Areas, including Exclusive Use Areas, within the Project in an amount of at least $2,000,000 for bodily injury, including death, and property damage arising out of a single occurrence. Such policy shall include coverage for property damage, bodily injury and death of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

(3) In the event the Project, or any portion thereof, is located in a Special Flood Hazard area designated by the Secretary of Housing and Urban Development and insurance is available for the Project under the National Flood Insurance Program ("**NFIP**"), the Association shall obtain a master or blanket policy of flood insurance on the Common Areas and any other property covered by the required form policy, in an amount deemed appropriate by the Board of Directors, but in an amount not less than (i) the maximum coverage available under the NFIP for all buildings and other insurable property within the Project or (ii) 100% of the current replacement cost of all such Common Areas.

(4) The Association shall maintain fidelity bond coverage which names the Association as an obligee for any person or entity handling funds of the Association, including, but not limited to officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4th) of the annual Regular Assessments on all Residential Units in the Project, plus reserve funds.

(5) The Association shall continuously maintain in effect such casualty, flood an liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, so long as any of which is a Mortgagee or Owner of a Residential Unit within the Project, except to the extent such coverage is not available or has been waived in writing by one or all of such lenders, as is applicable.

(6) The Board of Directors shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

(7) All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers: (i) subrogation of claims against Owners and tenants of Owners; (ii) any defense based upon coinsurance; (iii) any right of setoff, counterclaim apportionment, proration, contribution by reason of other insurance not carried by the Association; (iv) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (v) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (vi) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium; (vii) any right to require any assignment of any Mortgage to the insurer; (viii) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and (ix) prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

(d) **Discharge of Liens.** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

(e) **Assessments.** The Association shall fix, levy, collect, and enforce Assessments as set forth in Article VIII hereof.

(f) **Payment of Expenses and Taxes.** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

(g) **Enforcement.** The Association shall be responsible for and shall have the power to enforce this Declaration pursuant to Section 18.4 below.

The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, take reasonable action to require that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned laws. The Association shall, when it becomes aware of any violation of the aforementioned laws, take reasonable action to expeditiously correct such violations.

6.2 **Powers.** In addition to the powers enumerated in the Articles and Bylaws or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

(a) **Utility Service**. The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Residential Units, all water, gas, and electric service, communications services, garbage and trash collection, and janitorial or window cleaning service.

(b) **Easements**. The Association shall have authority, by a document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Plan and/or referred to in Article II, where necessary for roads, utilities, communications services, cable television, and sewer facilities over the Common Area to serve the Common Area and the Residential Units, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

(c) **Manager.** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days written notice, or without cause or payment of a termination fee on ninety (90) days written notice.

(d) **Adoption of Rules and Regulations.** The Board or the Members of the Association by majority vote may adopt reasonable Rules and Regulations that are not inconsistent with this Declaration relating to the use of the Common Area and all its facilities and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Written copies of such Rules and Regulations and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

(e) **Access**. For the purpose of performing construction, maintenance, or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours, except in emergencies) to the Owner of the Residential Unit in which maintenance work has not been performed, to enter any such Residential Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Association at the expense of the Association.

(f) **Assessments and Liens**. The Association shall have the power to levy and collect Assessments in accordance with the provisions of Article VIII herein and the Delinquent Assessment Collection Policy.

(g) **Fines and Disciplinary Action**. The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Governing Documents and the Rules and Regulations. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules and Regulations adopted pursuant to Procedures and Policies for Enforcing the Governing Documents, including the Rules. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for additional thirty (30) day period(s) until paid; provided, also, that suspension for any violation of the Rules and Regulations or this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for additional thirty (30) day period(s) in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of the Rules and Regulations and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law.

(h) **Enforcement**. The Board shall have the authority to enforce this Declaration pursuant to Section 18.4 below.

(i) **Acquisition and Disposition of Property**. The Board shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2)-class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members.

(j) **Loans**. The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2)-class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(k) **Dedication**. The Board shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, agreeing to such dedication.

(l) **Contracts**. The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Residential Units, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until the Association obtains a Certificate of Insurance naming the Association as an additional insured in regard to workers' compensation claims, if the receipt of such a certificate is practicable.

(m) **Delegation**. The Board and the Officers of the Association shall have the power to delegate their authority and powers to committees, officers, or employees of the Association or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) To make expenditures for capital additions or Improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest, or invitee with the Declaration, Bylaws, or Rules and Regulations promulgated by the Board;

(3) To make a decision to levy monetary fines, levy Individual Special Assessments, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;

(4) To make a decision to levy Regular Assessments or Special Assessments; or

(5) To make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments.

(n) **Security**. The Board shall have the power (but not the obligation) to contract for security service for the Common Area. Notwithstanding the foregoing, if the Association elects to provide any security services or systems, neither the Association nor the Board shall be deemed to have made any representation or warranty to any Owner, nor the tenants or invitees of any Owner, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Residential Unit owned by the respective Owner. The Association shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

(o) **Appointment of Trustee**. The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in *California Civil Code § 1367(b)*.

(p) **Litigation/Arbitration**. The Board shall have the power to institute, defend, settle, or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to *California Civil Code § 1368.3*. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or Improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

If, and to the extent that, there is any inconsistency between this Section 6.2 and applicable provisions of the California Civil Code and/or the California Code of Civil Procedure pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

(q) **Other Powers**. In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under *California Corporations Code § 7140.*

(r) **Common Area Improvements.** The Board shall have the authority and power to demolish, remove, and reconstruct any and all Improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve, and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Board shall comply with the provisions set forth in Article VIII relating to Assessments. All Common Area Improvements are subject to obtaining all permits and approval required by the City for such Improvements. However, any modifications to the Common Areas shall meet the requirements of the California Americans with Disabilities Act.

ARTICLE VII
BOARD OF DIRECTORS

7.1 **Election of Board of Directors.** The Board of Directors of the Association shall consist of five (5) Directors so long as Class B Members exist and thereafter shall consist of three (3) Directors. With the exception of the Directors appointed by the Declarant, all of the members of the Board must be Members of the Association in good standing. The initial Directors shall be appointed by the Declarant and shall hold office until their successors are elected at the first (organizational) meeting of the Members. To be in "good standing," a Member must be in compliance with the Bylaws, this Declaration, the Association's Rules and Regulations, and other applicable Governing Documents, ordinances, and statutes. Notwithstanding anything to the contrary in the Bylaws or this Declaration, so long as the Class B Members exist, Declarant shall have the right to appoint at least three (3) persons to serve on the Board of Directors and such persons need not be a resident or Owner within the Project. Furthermore, if after the conversion of Class B Members to Class A Members Declarant has sufficient votes to elect a person to the Board of Directors, such person need not be a resident or Owner within the Project. Upon the termination of Class B Membership when the number of Directors decreases to three (3) Directors, at the next annual election, one (1) Director from the previous year's Board shall continue to serve and two (2) Directors shall be elected by the Owners with the remaining Director.

7.2 **Meetings.** The Board shall meet not less than four (4) times during each fiscal year, and shall also meet at the call of the President or, if he is absent or unable or refuses to act, by any two (2) Directors. The Secretary shall keep summarized informal written minutes of such meetings of the Board. Regular meetings of the Board shall be held at a time and place within the Project or at a reasonable located near the Project, fixed by the Board from time to time. A special meeting of the Board may be called by written notice signed by the President of the Association or by any two (2) Directors, other than the President. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may hold executive sessions to discuss issues related to personnel; matters relating to the formation of contracts with third parties, including loans; pending or threatened litigation; Member discipline; or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments, as specified in the *California Civil Code §§ 1367, 1367.1.* Any matter discussed in an executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire Membership of the Association.

ARTICLE VIII
ASSESSMENTS AND LIENS

8.1 **Creation of Lien - Personal Obligation of Assessment.** The Association shall have the power to establish, fix, and levy Assessments against each Owner and to enforce payment of such Assessments in accordance with the provisions of the Declaration and pursuant to *California Civil Code § 1366.* Declarant, for each Residential Unit owned by it within the Project, hereby covenants, and each Owner of any Residential Unit within the Project by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree: 1) to pay to the Association: (a) Regular Assessments or charges; (b) Utilities Assessments, if applicable; (c) Special Assessments for capital Improvements; (d) Individual Special Assessments; and (e) Emergency Assessments, if applicable; any and all such Assessments to be fixed, established, and collected, from time to time, as hereinafter provided; and 2) to allow the Association to enforce any Assessment Lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The Regular, Utilities, Special, Individual Special, and Emergency Assessments, together with such interest, late charges, reasonable costs of collection, which include (i) reasonable charges imposed to defray the cost of preparing and mailing demand letters; (ii) reasonable attorney's fees incurred; (iii) recording costs; (iv) costs incurred with title companies or foreclosure service providers; and (v) costs associated with small claims court actions (the expenses referenced in this paragraph shall be collectively referred to herein as "**Reasonable Costs of Collection**"), and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, the Assessment Lien to become effective upon recordation of a Notice of Delinquent Assessment. Each such Assessment (and all other Assessments levied in accordance with this Declaration), together with late charges, interest, Reasonable Costs of Collection, including reasonable attorneys' fees as provided for herein, shall also be the joint and several personal obligation of each Owner of such Condominium at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to any Owner's successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments, after paying all amounts properly charged against such Assessments, shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

8.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the Owners and other residents in the Project and to enable the Association to perform its obligations hereunder.

8.3 **Due Dates of Assessments.** Regular Assessments shall be paid by each Owner in equal monthly installments in advance, on the first day of each month, beginning upon the Close of Escrow for each particular Residential Unit, and prorated through escrow to the date of Close of Escrow for the month in which escrow closes. Special and Emergency Assessments shall be due on the date indicated in the notice imposing the Special or Emergency Assessment or indicated on the ballot presenting the Special Assessment to the Members for approval. Declarant shall pay Assessments attributable to any Residential Unit owned by Declarant. The voting rights attributable to each Residential Unit shall not vest until Assessments against those interests have been levied by the Association.

8.4 **Regular Assessments.** Except as provided in this Section 8.4 and Section 8.5 below, and pursuant to *California Civil Code § 1366*, the Association shall levy Regular and Special Assessments sufficient to perform its obligations under the Governing Documents.

(a) **Initial Regular Assessment.** Each Owner shall be obligated to pay to the Board, or a designated Member thereof, or to the manager, if any, an initial Regular Assessment as set forth in the Final Public Report issued by the DRE. All Regular Assessments shall be prorated to each Owner in accordance with the individual Owner's undivided interest in the Common Area. Although such Regular Assessment will be assessed on an annual basis, the payment thereof shall be due at least monthly, as shall be set forth by the Board from time to time.

(b) **Increase of Regular Assessment by Board.** Annual increases in Regular Assessments for any fiscal year as authorized by this subsection 8.4(b) shall not be imposed unless (i) the Board has complied with *California Civil Code § 1365(a)*, relating to the pro forma operating budget, with respect to that fiscal year; or (ii) has obtained the approval of the Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with *California Corporations Code §§ 7510-7517and § 7613.* The Board of Directors may not impose a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year without the prior approval of the Owners as outlined in subpart (2) hereinabove. For the purposes of this Section 8.4(b), "**quorum**" means more than fifty percent (50%) of the Members of the Association. The provisions of this Section 8.4 do not limit Assessment increases for emergency situations as defined in Section 8.6 below.

(c) **Notice of Increase In Regular and/or Special Assessments**. The Association shall provide notice by first class mail to the Owners of the separate interests of an increase in the Regular or Special Assessments of the Association not less than thirty (30) days nor more than sixty (60) days prior to the increased Assessment becoming due pursuant to *California Civil Code § 1366(d).*

(d) **Certificate of Payment.** The Association shall, upon demand, furnish to any Member liable for Assessments, a written certificate signed by an Officer of the Association, setting forth whether the Assessments on a specified Residential Unit have been paid and the amount of delinquency, if any. A reasonable charge per certificate may be levied by the Board for issuance of said certificates. Such certificates shall be conclusive of payment of any Assessment therein stated to have been paid.

(e) **Initial Capital Contribution.** To ensure that the Property has significant operating reserves at the time the Residential Units are initially offered for sale, each Owner, other than Declarant shall be obligated to pay an amount equal to two (2) months Regular Assessments through their Residential Unit purchase escrows, which amount shall not be considered a prepayment of Regular Assessments."

8.5 **Special Assessments.** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board, in its discretion, considers appropriate. Special Assessments shall be allocated among the Members in the same manner as Regular Assessments. For any proposed Special Assessment in any fiscal year, the Board may not, without the approval of the Members constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with *California Corporations Code §§ 7510-751 and § 7613*, levy Special Assessments which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The provisions herein with respect to Special Assessments do not apply in the case of an Individual Special Assessment levied against a Member.

(a) **Individual Special Assessment.** The Association may levy an "**Individual Special Assessment**" against any Owner for the costs and expenses incurred by the Association to bring the Owner or Owner's Unit into compliance with the provisions of the Governing Documents and/or any other charge designated as an Individual Special Assessment, together with attorney's fees, interests and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Individual Special Assessment. The Board shall have the authority to adopt a reasonable schedule of Individual Special Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies *Section 7341* of the California Corporations Code and *Section 1363* of the *California Civil Code*, the Owner fails to cure or continues such violation, the Association may impose an additional monetary penalty each time the violation is repeated by imposing an Individual Special Assessment against such Owner. Individual Special Assessments may be enforced as herein provided. A hearing committee may be established by the Board to conduct proceedings related to the issuance and nonpayment of Individual Special Assessments. Notwithstanding any other provision in this Declaration to the contrary, except as provided in Section 5.14, Individual Special Assessments are assessments but they may not become a Assessment Lien against the Owner's Unit that is enforceable by a power of sale under *California Civil Code Sections 2924, 2924b* and *2924c*. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments."

8.6 **Emergency Assessments.** Notwithstanding the provisions set forth in Section 8.4 above, the Association may increase Assessments by any amount for emergency situations, which are deemed to be any of the following:

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

(b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or

(c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under *California Civil Code § 1365*.

However, prior to the imposition or collection of an Assessment under this Section 8.6, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process; and the resolution shall be distributed to the Members with the notice of Assessment.

8.7 **Commencement of Assessment.** Regular Assessments provided for herein shall commence as to all Residential Units covered by the Declaration, including those Residential Units owned by Declarant, beginning upon the date of the first conveyance of a Residential Unit to an individual Owner other than Declarant.

8.8 **Maintenance Fund.** Assessment charges collected by the Association shall be promptly deposited in a commercial bank account in a bank to be selected by the Board or by the Manager, if any, which said account shall be clearly designated in the name of the Association. The Board or Manager, as the case may be, shall have exclusive control of said account and shall be responsible to the Members for the maintenance of accurate reports thereof at all times. No withdrawal shall be made from said account, except to pay for the charges and expenses for the common benefit of all Members.

8.9 **Continuing Liability for Assessment.** No Member may exempt himself from liability for his specified contribution to the maintenance fund by waiver of the use or enjoyment of the Common Area or by the abandonment of his Residential Unit.

8.10 **Delinquent Assessments.** Assessments are delinquent fifteen (15) days after they become due. If an Assessment is delinquent, the Association may recover all of the following:

(a) Reasonable Costs of Collection, including reasonable attorney's fees;

(b) A late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars ($10.00), whichever is greater; and

(c) Interest on all sums imposed in accordance with this Section 8.10, including, but not limited to, the delinquent Assessment, Reasonable Costs of Collection, attorney's fees, and late charges at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

8.11 **Effect of Non-Payment of Assessments; Lien Rights**. The Board shall have the authority to create a lien ("**Assessment Lien**") with power of sale on each separate Residential Unit to secure payment of the amount of Assessments, whether Regular, Utilities, Individual Special, or Special, plus any costs of collection, late charges, and interest, assessed to the Owner(s) thereof, pursuant to the provisions of the Delinquent Assessment Collection Policy and *California Civil Code § 1367.1 and § 1367.4,* as amended from time to time.

8.12 **Transfer of Residential Unit by Sale or Foreclosure**. The sale or transfer of any Residential Unit shall not affect the Assessment Lien. However, the sale of any Residential Unit pursuant to foreclosure of a First Mortgage shall extinguish the Assessment Lien of any Assessments on that Residential Unit (including attorney's fees, late charges, or interest levied on connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Residential Units to which at least sixty-seven percent (67%) of the vote in the Association is allocated, and the consent of the Eligible Mortgage Holders holding First Mortgages on Residential Units comprising fifty-one percent (51%) of the Residential Units subject to First Mortgages. No sale or transfer shall relieve such Residential Unit from liability for any Assessments thereafter becoming due, or from the lien thereof.

If the Residential Unit is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Residential Unit through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessment against the Residential Unit to be transferred and the Residential Unit shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement; provided, however, that the grantee shall be liable for any Assessment that becomes due after the date of the transfer.

8.13 **Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive to the extent of any liens created pursuant to this Article VIII, the benefits of any homestead or exemption law of the State of California in effect at the time any installation of Regular Assessments become delinquent or any lien is imposed pursuant to the terms hereof.

8.14 **Rights of Board - Waiver of Owners.** Each Owner hereby vests in and delegates to the Board, or its duly authorized representatives, the right and power to bring all actions at law or lien foreclosures, whether judicially or by power of sale or otherwise, against any Owner or Owners for the collection of delinquent Assessments in accordance herewith and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Assessments as set forth herein.

8.15 **Unallocated Taxes.** In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Residential Units, said taxes shall be included in the Assessments made under the provisions of this Article VIII and, if necessary, a Special Assessment may be levied against the Residential Unit in any amount of said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

8.16 **Taxes and Utilities Separately Assessed.** Each Owner shall, before delinquency, pay any real and personal property taxes separately assessed against his respective Residential Unit and all utility charges separately metered or charged against his Residential Unit; and such payment shall be made by each Owner in addition to and separately from Assessments otherwise payable to the Association by each such Owner.

8.17 **Exemption from Assessments.** All property, if any, dedicated to and accepted by a local public authority or public agency shall be exempt from the Assessments created herein. However, no land or Improvement devoted to Residential Unit use shall be exempt from said Assessments.

ARTICLE IX
DECLARANT'S RIGHTS AND RESERVATIONS

9.1 Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to install and maintain such structures, displays, signs, billboards, flags, and sales offices as may be reasonably necessary for the conduct of its business of disposing of the Residential Units by sale, resale, lease, or otherwise. The rights of Declarant hereunder shall also include the right to use guest parking spaces on any portion of the Project owned by the Declarant and/or a portion of the Project owned by the Association, provided an agreement is entered into between the Declarant and the Association for the use of the portion of the Project for guest parking spaces, subject to this Declaration in conjunction with the sales offices described herein. Each Owner, by accepting a deed to a Residential Unit hereby acknowledges that the activities of Declarant may temporarily impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience, or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Residential Unit in the Project by a purchaser from Declarant to establish on that Residential Unit additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project. Declarant may use any Residential Units owned by Declarant in the Property as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Committee approval of any Improvement constructed or placed on any portion of the Property by Declarant so long as any such Improvement is approved by and conforms to applicable standards and regulations of the City of San Diego. The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest to any portion of Declarant's interest in any portion of the Project by a written assignment. Declarant and its prospective purchasers of Residential Units shall be entitled to the nonexclusive use of the Project without further cost for access, ingress, egress, use or enjoyment in order to show the Project to its prospective purchasers and dispose of the Project as provided herein. The Association shall provide Declarant with all notices and other documents to which a beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. The rights and reservations of Declarant set forth in this Article IX shall terminate on the fifth (5th) anniversary of the first Close of Escrow for the sale of a Residential Unit in the Project.

ARTICLE X
USE RESTRICTIONS AND OWNERS OBLIGATIONS

In addition to all of the covenants herein contained, the use of the Project and each Residential Unit therein is subject to the following:

10.1 **Residential Unit Use.** All Residential Units are zoned for residential purposes only; however, those businesses enumerated below and in the designated Residential Units listed shall be permitted.

(a) **Residential Use**. Residential Units 6, 7, 8, 9, 10, 11, 12, and 14 shall be occupied and used for residential purposes only by the Owners, their tenants (to the extent that tenants are permitted in the Project), and social guests; and no trade or business shall be conducted except as hereinafter set forth. The Residential Unit may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other residential Owners.

(b) **Commercial Use**. Units 1, 2, 3, 4, 5, and 13 are permitted to conduct those businesses enumerated in Section 10.10 below. In the event any business use by a Residential Unit Owner results in an increase in the Association insurance, the Residential Unit Owner shall be responsible for that increased portion of insurance only. Such portion of the increased insurance shall be an Individual Special Assessment against that Residential Unit. Each Residential Unit Owner who conducts a business within a Residential Unit shall maintain commercial general liability insurance against claims for death, personal injury or property damage occurring upon, in or about the Owner's Residential Unit relating to the commercial use thereof in an amount of not less than Three Million Dollars ($3,000,000.00) per occurrence and general aggregate; provided, however, the Board shall have the right to modify or adjust such minimum requirement in their reasonable discretion.

10.2 Nuisances. No noxious, illegal, or seriously offensive activities including, but not limited to, activities defined as a nuisance under the City of San Diego's Municipal Code, as may be amended from time to time, shall be carried on upon or within any Residential Unit, or in any part of the Project. Nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each Owner of his respective Residential Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies set forth herein, may be abated or enjoined by any Owner, any Member of the Board, the manager or the Association.

10.3 Vehicle Restrictions.

(a) **Commercial Vehicles.** No commercial vehicle, truck (other than standard size van or pick up truck), inoperable automobile, or similar equipment shall be permitted to be parked or be stored upon any area within the Common Area, other than temporarily (not to exceed twenty-four (24) hours). This restriction excludes sedans or standard size pick up trucks which are used for both business and personal use, provided that any markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project.

(b) **Motorcycles**. No motorcycles, other motor driven two-wheel vehicles, motor driven three-wheeled vehicles, dune buggy, or any off-road vehicle, whether licensed or unlicensed by the State of California, shall be driven upon the Project, except for the purposes of ingress and egress, and except for agriculturally related work or work involving construction or Improvements. No electric or motorized vehicles, including, without limitation, motor scooters, mini-bikes, or other such vehicles, shall be operated on the Project's streets or access ways unless said vehicle is properly licensed by the California Department of Motor Vehicles, or is otherwise a street legal vehicle.

(c) **Recreational Vehicles**. No motor home, camper, trailer, boat, motorcycle, all terrain vehicle, or other recreational vehicle shall at any time be parked in the Common Area, an Exclusive Use Area, including an Exclusive Use Garage or in such a manner as to be visible from any street or neighboring Residential Units; however, a motorcycle or scooter licensed for street driving may be parked within an Exclusive Use Garage only, but no other portion of the Common Area or an Exclusive Use Area.

(d) **Maintenance.** No Owner shall conduct repairs or restoration of any vehicle or boat unless the same are conducted within a completely enclosed garage. Vehicles owned, operated, or within the control of any Owner shall be parked in the garage of such Owner. Owners shall not wash their vehicles within their garage or upon any Common Area.

(e) **Garages**. Each Owner shall ensure that his garage is maintained at all times so as to be capable of accommodating at least one (1) full-sized automobiles. No garage shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, to be used for any residential, business, commercial, industrial, manufacturing, mercantile, or vending purposes. With the exception of entering and leaving the garage in accordance with the Owner's reasonable use thereof, all garage doors shall remain closed. Notwithstanding the foregoing, any garages owned by Declarant may be used by Declarant or its designee for any purpose, including, but not limited to, models, sales offices, signage, construction offices, storage, and the like.

Each garage contains a lift to elevate one (1) vehicle thereby allowing a second vehicle to be parked beneath the lifted vehicle. This lift mechanism shall be the sole responsibility of the Residential Unit Owner to maintain and repair. Each Residential Unit Owner shall reasonably maintain their lift mechanism to ensure proper functioning and noise level. Any and all liability arising from the lift mechanisms shall be the sole and absolute responsibility of the Residential Unit Owner. Under no circumstances shall the Association be liable or responsible for maintenance and or liability for the lift mechanism.

10.4 **Signs.** No business sign or advertising may be displayed in the Common Area without the written permission of the Board; provided, however, that this provision does not prohibit or restrict the display upon any Residential Unit of a sign, with dimensions as designated in the Rules and Regulations, advertising the Residential Unit for sale or for rent. Without the prior written consent of the Association, no Owner shall install a sign or flag pole mount which penetrates or otherwise alters the Common Area including the exterior of any Residential Unit. The display of any vehicle or any other articles for sale will not be permitted.

Notwithstanding the foregoing, the Declarant, its successors or assigns, may display signs or billboards, regardless of size, for direction or informational purposes or to advertise the Project during the construction or initial sale period.

Owners may display the flag of the United States on their respective Residential Units on any flagpole which is four (4) feet or less in length, or over four (4) feet in length, if the Board of Directors approves such a flagpole. Installation of any flagpole over four (4) feet in length is not allowed except with the Board's approval. "Display the flag of the United States" means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole four (4) feet or less in length, or in a window; "display the flag of the United States" does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, painting materials, flora or balloons, or any other similar building, landscaping, or decorative component.

Residential Unit 4 may display one (1) sign which may be lighted, excluding neon, provided the sign is for the advertising of the business conducted within and it is located within the window space of the unit, provided the sign is attached to the glass. Alternatively, the sign may be located outside the Residential Unit not less that one (1) foot from the exterior wall of the building. Signs are subject to review and pre-approval of the Committee.

Residential Units 1, 2, 3, 5, and 13 may display a sign for the related business within provided it is no larger than 18 inches x 16 inches, is not lighted, contains no neon lighting, and is located within the window space of the Residential Unit attached to the glass and has been pre-approved by the Committee.

10.5 **Animals.** Each Residential Unit shall be limited to two (2) domestic animals at any given time. For the purposes of this Section, "**Domestic Animals**" shall mean a dog or a cat. The Board may set forth specific rules and regulations relating to the size or type of animal that may be kept, provided that such rules and regulations are in conformity with this Declaration. No farm animals of any kind, including, without limitation, chickens, ducks, goats, or pigs, shall be permitted to be raised, maintained, trained, housed, or otherwise live in any Residential Unit in the Project.

Birds, reptiles, and fish, which are maintained in an enclosed cage, aquarium, or other such enclosure shall be permitted in the Residential Units provided that the enclosure is maintained in a clean and sanitary manner and the animal is kept within the Residential Unit, and not on any balcony or patio of a Residential Unit.

All animals belonging to Owners, occupants, or their licenses, tenants, or invitees within the Project must be either kept within a Residential Unit, if any, or on a leash being held by a person capable of controlling the animal. All areas where animals are kept shall be maintained in a neat and sanitary condition.

Notwithstanding the foregoing, no pets may be kept in the Project, which are obnoxious or annoying to other Owners. No animals or pets shall be allowed in the Common Area except as may be permitted by the Board.

After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any unleashed pet dog within the Common Area to be removed by the Association (or any Owner) to a pound or animal shelter under local jurisdiction by calling the appropriate authorities; whereupon the pet owner may, upon payment of all expenses connected therewith, repossess the pet. Owners and Owners' tenants and guests shall prevent their pet(s) from soiling any portion of the Common Area and shall promptly clean up any mess left by their pet(s). Owners shall be fully responsible for any damage caused by their pets.

10.6 **Garbage and Refuse Disposal.** All rubbish, trash, garbage, and recycling shall be the responsibility of the Owner of each Residential Unit. Trash and recycling shall be regularly collected by the City of San Diego. No rubbish, trash, garbage and/or recycling shall be accumulated on any deck, balcony, stairwell, or yard of a Residential Unit.

10.7 **Antennas/Satellite Dishes.** Antennas and/or Satellite dishes are not permitted unless and until an Owner can demonstrate to the Association, including obtaining the Association's approval, that such antennas or satellite dish can be installed and used without causing damage to the Common Areas or the exterior walls of a Residential Unit, including, without limitation, breach or penetration of such walls.

10.8 **Right to Lease.** Owners of the respective Residential Units shall have the right to lease his or her Residential Unit, provided that the lease is in writing, for a term not less than six (6) consecutive months, expressly provided that the tenancy is made subject to the Association's Rules and Regulations and the covenants, conditions, limitations, and restrictions contained in this Declaration, and provides that any failure by the tenant to comply with the terms of the Declaration shall be a default under the lease.

10.9 **Restriction on Further Subdivision.** No Residential Unit shall be further subdivided nor shall less than all of any such Residential Unit be conveyed by an Owner thereof. Nothing herein shall prohibit property from being held in a trust, a corporation or in joint ownership, including, without limitation, community property and joint tenancy.

10.10 **Business or Commercial Activity.** No part of the Project shall ever be used, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes, except that the following businesses are authorized: Professional and administrative occupations without external evidence thereof may be conducted by Owners so long as such occupations are in conformance with the City of San Diego Zoning Code, and such activities are merely incidental to the use of the Residential Unit as a single family residence, except as follows:

Residential Units 1, 2, 3, 4, 5, and 13 may be used for professional businesses including, but not limited to; real estate office, photography or graphic arts, internet café, insurance, engineering, legal, or accounting services, or similar use subject to prior written approval of the Board of Directors.

Businesses that will not be allowed in the Project include, but shall not be limited to: medical or dental offices, retail, massage parlor, tattoo parlor, nail or hair salon, pawn shop, money exchange, or check cashing business be operated unless otherwise provided for in this Declaration.

In the event any business use provided for in this Section 10.10 results in an increase in the insurance policies for the Association, the Residential Unit Owner conducting that business shall be solely and absolutely responsible for the increased portion only of the insurance policy. The increased portion shall be an Individual Special Assessment against the Residential Unit.

10.11 **No Mining and Drilling.** No portion of the Project shall be used for the purpose of mining, quarrying, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

10.12 **Clotheslines.** No clotheslines shall be used on the property for any purpose.

10.13 **Drainage**. There shall be no interference with or obstruction of the established surface drainage pattern over any Residential Unit, or its yard, within the Project, unless an adequate alternative provision is made for property drainage and is first approved in writing by the Board and the Engineering Department of the City where the Project is located. Any alteration of the established drainage pattern must at all times comply with all applicable City of San Diego ordinances. For the purposes hereof, "established" drainage is defined as the drainage that exists at the time the overall grading of a Residential Unit is completed by Declarant. Each Owner shall maintain, repair, replace, and keep free from debris or obstruction the drainage system and devices, if any, located on his Residential Unit. Water from any Residential Unit may drain into adjacent streets but shall not drain onto adjacent Residential Units unless an easement for such purposes is granted herein or in the Project Map for the Real Property. Declarant hereby reserves for itself and its successive owner, over all areas of the Project easements for drainage from slope areas and drainage ways constructed by Declarant.

10.14 **Architectural Committee.** The Declarant hereby establishes the Architectural Committee ("**Committee**") for the purposes of performing duties of the Committee as set forth in this Declaration and the Architectural and Landscaping Rules, as amended from time to time.

(a) **Purpose of Committee.** The Committee is established for the purpose of reviewing and approving all building, construction, landscape, and other such plans by which an Owner improves the Residential Unit owned. The Committee shall have the duty and the right to promulgate reasonable standards against which to examine any request made pursuant to this Section

10.14 and Section 10.15, in order to ensure that any proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the property. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, Improvement, or structure of any kind shall be commenced, installed, erected, painted, repainted, or maintained upon the Residential Unit, nor shall any alteration or Improvement of any kind be made thereto until the same has been approved in writing by the Committee appointed pursuant to this Section 10.14.

(b) **Establishment of Committee.** The Committee shall consist of three (3) members, each member serving for a term of two (2) years. Unless they shall sooner resign (by giving notice to all other members of the Committee) or be removed, the term of a member shall automatically be terminated at the expiration of their two (2) year term, regardless of whether or not a replacement member has been appointed.

Declarant shall have the unrestricted right to elect, appoint, and remove any or all of the members of the Committee at any time, and to fill any vacancy on the Committee until the termination of Class B Membership; however, thereafter and for so long as Declarant owns a Residential Unit within the Project, Declarant is entitled to appoint one person to the Committee, in its reasonable discretion. Declarant may at any sooner time assign in writing its power of removal and appointment concerning members of the Committee to the Owners of the Residential Units in the Project, subject to such terms and conditions as Declarant may impose in its sole discretion. Such assignment shall be in writing and recorded in the Office of the County Recorder of the county where the Project is located.

After the turn over date, the Board shall have the power to appoint and remove all of the members of the Committee. Board members may also serve as Committee members. Members of the Committee appointed by Declarant need not be owners of Residential Units or residents of the Project, but all members of the Committee appointed by the Board of Directors must be Owners of Residential Units.

(c) **Meetings.** The Committee shall meet from time to time as necessary to perform the described duties. Any two (2) members of the Committee may call a meeting by giving at least four (4) days prior written notice if such notice is delivered by mail or forty-eight (48) hours notice if such notice is delivered personally, electronically or by telephone of the time and place of such meeting to the other members (unless the notice requirement is waived by all members of the Committee as to a particular meeting). The actions of a majority of the members of the Committee at a meeting shall be deemed the action of the Committee. The Committee may, from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but not need be one of its members) to take any action or perform any duties for or on behalf of the Committee. In the absence of such a designation, the vote of a majority of the Committee at a meeting, or the unanimous written consent of the Committee taken without a meeting, shall constitute the act of the Committee.

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

(e) **Non-Liability of Committee Members.** No right, power, or responsibility conferred on the Committee by this Declaration shall be construed as a duty, obligation, or disability charged upon the Committee, Declarant, or any employee or agent of the Committee or Declarant. Neither Declarant, the Committee, any Committee member, or their duly authorized representatives shall be liable to any Owner or other person for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the Committee's duties; unless such loss, damage, or injury arises out of the willful or malicious misconduct of the Committee.

10.15 Architectural and Landscaping Rules and Application Process. In addition to the provisions of Section 10.14 and this Section 10.15, the Declarant has developed Architectural and Landscaping Rules which govern the procedures for the submission of architectural plans for approval, building and maintenance requirements, fees to accompany each application for review and approval, fee for inspection of completion, and other such relevant factors which it will take into consideration in reviewing submissions. The Architectural and Landscaping Rules, as may be amended from time to time, shall at all times govern the Committee's duties, powers, and obligations, in conjunction with this Section 10.15 and Section 10.14.

(a) **Plans and Specifications Required**. Architectural plans, including landscape plans (collectively referred to as "**Architectural Plans**") and specifications showing the nature, kind, shape, height, width, color, size, materials, and location of any proposed Improvements or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, if any, and as to location in relation to Residential Units lines, surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee, or to rebuild in accordance with Architectural Plans and specifications previously approved by the Committee. The Committee may require such detail in Architectural Plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, and description or samples of exterior material and colors. Nothing contained in this paragraph shall be construed to limit the right of an Owner to in terms of the design, furnishings, or paintings of the interior portions of any building after construction has been completed.

(b) **Submission of Plans.** An Owner shall submit Architectural Plans in conformity with this Article X and the Architectural and Landscaping Rules, to the Committee for its approval. The address of the initial Committee appointed by Declarant is BridgeView Lofts Homeowners' Association, Inc., 155 North Lake Avenue, Second Floor, Pasadena, California 91101. The Owner submitting the Architectural Plans and specifications shall obtain a written, dated receipt therefor from an authorized agent of the Committee.

(c) **Review and Approval of Plans.** The Committee shall review and approve or disapprove all Architectural Plans submitted to it for any proposed Improvement, alteration, or addition to structures or landscaping on the basis of satisfaction of the Committee, in its sole discretion, that such Architectural Plans and specifications comply with the provisions of this Declaration, the Architectural and Landscaping Rules, and with the grading plan, proposed location of the Improvements on the Residential Units, the finished ground elevation, the color scheme, finish, design, proportions, architecture, shape, height, styles, and appropriateness of proposed Improvements to views for adjoining Residential Units, of materials used thereon, the planting, landscaping, size, height, or location of vegetation on a Residential Unit, or on the basis of aesthetic consideration and the overall benefit or detriment which would generally result to the immediate vicinity and the Project.

The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes, and materials and similar features, but shall not be responsible for reviewing or approving any Architectural Plans or design from the standpoint of structural safety or conformance with building or other codes. The Committee shall approve Architectural Plans and specifications submitted for its approval only if it deems that the installation, construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Project or the enjoyment thereof by the Owners, and that the upkeep and maintenance thereof will not become a burden on the Owners or Declarant

The granting of a permit by a governmental agency shall not be conclusive on the issue of approval or disapproval under the scope of review set forth herein for the Committee. The requirements of this Declaration, and any other documents relating thereto, may be more restrictive than the requirements of the reviewing governmental agency.

In the event the Committee fails to approve or disapprove Architectural Plans and specifications within thirty (30) days after the same have been submitted to it, the Architectural Plans shall be deemed disapproved. In such event, the Owner shall be responsible for contacting the Architectural Committee and/or the Board of Directors relating to such Architectural Plans.

If a Committee disapproves the Architectural Plans, the reason for said disapproval shall be provided to Owner in writing. Owner may either: (i) Request a hearing to resolve the disputed disapproved portions of the Architectural Plans to the Board. The Hearing shall be conducted in accordance with the Policies and Procedures for Enforcing the Governing Documents, including the Rules; or (ii) Owner may resubmit the Architectural Plans for review and approval under this Section.

Notwithstanding any other provision of this Declaration, the approval referenced in this subsection (c) shall be conditional if a government approval is required. To obtain final approval from the Committee, the Architectural Plans, along with the applicable government approvals, must be submitted to the Committee for final approval which may or may not be given to Owner, if the government approved plans are different than the Committee's conditionally approved plans. No work may commence until final approval is granted by the Committee.

(d) **Government Approvals and Compliance.** All alterations, modifications, or other improvements on or within Residential Units in the Project shall comply with all design requirements, approvals and procedures of the City of San Diego and/or County. Before commencement of any alteration or improvements approved by the Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. No Owner shall permit anything to be done or kept in, on, or about his or her Residential Unit that violates any law, ordinance, statute, rule, or regulation of any local, county, or state or federal body.

Any modifications made to Residential Units 1, 2, 3, and 4, which have been designated as wheel chair accessible must meet the California Americans with Disabilities Act requirements for adaptable units. This is applicable to the ground floor level of these Residential Units, including the primary entrance path.

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

(f) **No Waiver of Future Approvals.** The approval of the Committee of any proposals, plans and specifications, or drawings for any proposals, plans and specifications, or drawings for any proposed or completed work, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of the right to withhold approval to similar proposals, Architectural Plans and specifications, drawings, or matter, subsequently submitted for approval or consent.

(g) **Inspection of Work and Correction of Defects.** Inspection of work and correction of defects therein shall proceed as follows:

(1) The Committee or its duly authorized representative may at any time inspect any approved Improvement both during the construction of such Improvement and after its completion; provided, however, that the Committee's right of inspection shall terminate ninety (90) days after the respective Owner has given written notice to the Committee of the Improvement's completion. If, as a result of such inspection, the Committee finds that any part of such Improvements was done or is being constructed without obtaining approval of the Architectural Plans, or was not done in substantial compliance with the Architectural Plans approved by the Committee, it shall notify the Owner in writing of failure to comply with this Article within sixty (60) days of the inspection. The notice should specify the particulars of noncompliance. The Committee shall have the authority to require the Owner to remedy the noncompliance.

(2) If an Owner fails to remedy any noncompliance described in subsection 10.15(g)(1) within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Owner in writing of such failure to remedy such noncompliance, the nature thereof, and the estimated cost of correcting or removing the same. The Owner shall remedy or remove the noncompliance within a period of not more than forty-five (45) days from the date that notice of noncompliance is issued by the Committee to the Owner. If the Owner does not comply with the decision of the Committee within that period, the Committee, at its option, may record a "**Notice of Noncompliance**" and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance.

(3) If the Committee fails to send a Notice of Noncompliance within the sixty (60) day period after the inspection, or fails to perform the inspection within the ninety (90) day period described above, then the Improvement at issue shall be deemed to comply with the approved Architectural Plans for the purposes of Committee inspection and approvals only.

(h) **No Occupancy Prior to Completion.** Except as may otherwise be allowed by consent of the Committee, no Owner shall occupy or allow to be occupied his or her Residential Unit prior to the completion of the primary Residential Unit structure. As used herein, the "completion" of the residential structure shall be the date on which a certificate of occupancy for such structure has been issued by the City of San Diego or other appropriate governmental agency.

(i) **Fees, Expenses, and Charges by the Committee.** The Committee may establish a fee for review of proposed plans and may charge the applying Owner with the cost of a third party engaged to assist in such review, including, without limitation, engineers and architects. These fees, expenses, and charges may be collected prior to review of the application and the submission of the Architectural Plans shall not be deemed submitted for purposes of calculating the thirty (30)-day review time set forth in Section 10.15(c). In addition to fees, expenses, and charges, the Committee may require Owner to post a bond to ensure completion of the project, damage to other Residential Units, and damage to the Common Areas.

10.16 Power Equipment and Car Maintenance. The use of power equipment, operation of hobby shops, and/or performance of car maintenance shall only be permitted on the Project in accordance with the Rules and Regulations, as adopted by the Board and amended from time to time.

10.17 Liability of Owners for Damage to Common Area. The Owner of each Residential Unit shall be liable to the Association for all damage to the Common Area or Improvements thereon caused by such Owner, any occupant of his Residential Unit, guest, or by such Owner's pet(s), except for that portion of said damage, if any, fully covered by insurance. Liability of an Owner shall be established only after notice to the Owner and a hearing before the Board. In the event an Owner disagrees with the decision of the Board on the question of liability, the Owner may petition a court of law or submit the matter to arbitration under the rules of the American Arbitration Association.

10.18 Maintenance of Residential Units and Improvements. Each Owner is responsible for the care and maintenance of those components of each Owner's Residential Unit, the Exclusive Use Area and all utilities which solely service the Residential Unit, as are more specifically designated for maintenance by the Owner set forth in the Maintenance Responsibility Chart; however, the Association shall only be responsible for items specifically designated as an Association responsibility with the Owner being responsible for all other maintenance items. Any such maintenance, repair, or replacement of any of the components set forth on the Maintenance Responsibility Chart that are visible from outside of a Residential Unit shall be consistent with the existing design, aesthetics, and architecture of the Project and shall be approved by the Board or the Committee. Maintenance of any Exclusive Use Area by an Owner shall be conducted in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof and to maintain the established system of drainage. In the event that an Owner causes damage to the Common Area or another Residential Unit either by failing to maintain the Residential Unit or in performing any maintenance to such Owner's Residential Unit, the Association may levy an Individual Special Assessment with respect to the cost of repair of such Common Area.

The Association and/or its agent, shall have the right to contact service providers to perform maintenance or repairs on an Owner's Residential Unit, with or without the prior permission of the Owner and the Owner shall be solely and absolutely responsible for the cost thereof.

The Association shall be responsible for the cleaning of all exterior windows in the Project, excluding sliding glass doors or windows located within Exclusive Use Area accessible by the Owner, which will require window cleaners to have access to the exterior of an Owner's Residential Unit at such times in order to fulfill their cleaning duties. Seventy-two (72) hours notice shall be given to all Owners before any scheduled cleaning of exterior windows.

10.19 Owner's Insurance Obligations. It is the responsibility of each Owner to provide insurance on all portions of the Residential Unit, specifically including the improvements located within the Residential Unit, the mechanical systems, Utility Facilities and all items which are the

Owner's obligation to maintain pursuant to the Maintenance Responsibility Chart and all other portions of the Residential Unit for which the Association has not purchased insurance in accordance with Section 6.1(c) above. Nothing herein shall preclude any Owner from carrying any public liability insurance as the Owner deems desirable to cover the Owner's individual liability for damage to person or property occurring inside the Owner's Residential Unit or elsewhere upon the Project. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are applied.

10.20 Landscaping. No trees and/or shrubs may be permanently planted either within the private yard of a Residential or in the Common Area. All trees and/or shrubs must be planted in removable containers such as planting pots or boxes. These receptacles are subject to review and approval of the Architectural Committee if they are within public view.

10.20 Mailboxes. The cluster mailboxes are the property of the United States Mail Service. The Association shall not be liable for mail theft from the cluster mailboxes.

ARTICLE XI
GENERAL PROVISIONS

11.1 Right of Entry for Emergency Repair. The Board shall have authority to designate one or more qualified repairmen or other persons to enter upon and within any individual Residential Unit in the presence of the Owner thereof, or otherwise, for the purpose of making emergency repairs therein or for necessary maintenance or repair to portions of the Common Area or to abate any nuisance being conducted or maintained in said Residential Unit in order to protect the property rights and best interests of the remaining Owners.

11.2 No Racial Restrictions. No Owner shall execute, file, or record any instrument which imposes a restriction upon the sale, lease, or occupancy of his Residential Unit on the basis of race, sex, color, religion, creed, marital status, sexual orientation, national origin, ancestry, familial status, source of income, or conditions of physical or mental disability.

11.3 Enforcement of Declaration and Bylaws. The Owners, or any one of them, or any Director or the Board acting on behalf of the Owners shall be entitled to bring legal action for damages against any Owner who shall default in the performance of any of the provisions of the Governing Documents, including this Declaration, promulgated by the Board for the protection of the Project, including, but not limited to, the covenant to pay Assessment charges. Further, said Persons shall be entitled to enjoin any violation of the Governing Documents and shall further be entitled to prosecute any other legal or equitable action that may be necessary to protect the Project.

If any Owner, Director, or the Board shall deem it necessary to initiate any legal or equitable action for the protection of the Project against any Owner and they shall be the prevailing party in said action, then said Persons shall be entitled to reasonable attorneys' fees and costs of said action from said Owner for expenses incurred in bringing or initiating said action; any judgment rendered against any such defaulting Owner shall include costs of said action, together with reasonable attorneys' fees in an amount to be fixed by the court. Notwithstanding the foregoing, the Association is not empowered to cause a forfeiture nor abridgement of any Owner's right to the full use and enjoyment of his or her Residential Unit on account of the failure by the Owner to comply with the provisions of the Governing Documents or of duly enacted rules of operation for Common Areas and facilities except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association.

11.4 **Liberal Interpretation of Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Project for the mutual benefit of all Owners.

11.5 **Severability of Provisions.** The provisions herein shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any provisions hereof shall not affect the validity of the remaining provisions.

11.6 **Cumulative Remedies.** Each and every legal or equitable remedy provided for herein shall be deemed to be cumulative, whether so expressly provided for or not.

11.7 **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the heirs, legatees, executors, devisees, administrators, guardians, conservators, successors, purchasers, lessees, sublessees, encumbrancers, donees, grantees, Mortgagees, lienors, and assigns of and from the parties hereto.

11.8 **Waiver or Breach of Declaration.** No waiver of any breach of any of the covenants or conditions of this Declaration shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition herein contained.

11.9 **Delivery of Notices and Documents.** Any written notice or other documents required by this Declaration may be delivered personally, by mail or by electronic transmission (provided that such method is permitted by and the Association complies with California Corporate Code Section 20). If by mail, such notice, unless expressly provided for herein or in the Bylaws to the contrary as to the type of notice being given, shall be deemed to have been delivered and received forty-eight (48) hours after a copy thereof has been deposited in the United States mail, postage paid, addressed as follows:

(a) If to an Owner other than Declarant, to the address of any Residential Unit in the Project owned by him in whole or in part or to the address last furnished to the Board by such

Owner, for the purpose of giving notice and delivering documents. Each Owner, other than Declarant, shall file in writing with the Board promptly upon becoming an Owner his address for the purpose of giving notice and delivering documents and shall promptly notify the Board in writing to any subsequent change of address.

(b) If to Declarant, whether in its capacity as an Owner or in any other capacity, to the following address: 155 North Lake Avenue, Second Floor, Pasadena, California, 91101.

(c) Prior to the organizational meeting, notices to the Board shall be addressed to the address set forth in Section 11.9(b) above. Thereafter, notices to the Board shall be addressed to the Secretary, and the Board shall cause the address of the Secretary to be posted at all times in a conspicuous place. In addition, from and after the organizational meeting, notice of the address of the Secretary of the Association shall be given by the Board to each Owner, within a reasonable time after the Board has received actual notice of such Owner's purchase of a Residential Unit.

11.10 **Notification of Sale of Residential Unit.** Concurrently with the consummation of the sale of any Residential Unit under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferees shall notify the Board, in writing, of such sale. Such notification shall set forth: (a) the name of the transferee and his transferor; (b) the street address or Residential Unit number of the Residential Unit purchased by the transferee; (c) the transferee's mailing address; and (d) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, the Board, or the Committee or any agent or representative thereof, shall be deemed duly made and given to the transferee, if duly and timely made and given to said transferee's transferor.

11.11 **Joint and Several Liability.** In the case of joint ownership of a Residential Unit, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

11.12 **Encroachment Easement.** Each Residential Unit within the Project is hereby declared to have an easement over all adjoining Residential Units and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Residential Unit agree that minor encroachments over adjoining Residential Units or Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachment so long as they shall exist.

11.13 **California Code References**. Any and all references to California statutory law shall include the referenced section, any amendments thereto, restatements, replacements, or renumbering. In the event there are any conflicts between any of the Governing Documents, including this Declaration and the California statutory law, the statutory law shall conclusively control.

11.14 **Dispute Resolution.** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

(a) **Claims for Declaratory Relief or Enforcement of Governing Documents.** Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the filing of a civil action solely for declaratory relief or injunctive relief to enforce the Governing Documents, or for declaratory relief or injunctive relief to enforce the Governing Documents in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars ($5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter through an internal dispute resolution in compliance with *California Civil Code §§ 1363.810-1363.850* before submission to alternative dispute resolution in compliance with the provisions of *California Civil Code § 1369.510-1369.590.* The Board shall comply with the requirements of *California Civil Code § 1369.590* by providing Members of the Association annually with a summary of the provisions of *California Civil Code §§ 1363.810-1363.850 and §§ 1369.510-1369.590*, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of *California Civil Code § 1369.520* may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents or applicable law."

(b) **Design or Construction Defect Claims.** Association or any Owner shall have the right to pursue an action acting against the original developer of the Project relating to Design or construction defects claims. Declarant did not construct, build, or design the Project or act as a builder, designer, general contractor, subcontractor, materials supplier, individual project manager, or design professional with relation to the project. However, Declarant had limited involvement with making improvements to the common area and performing maintenance and upkeep to the Project. Actions by the Association pertaining to or based upon a claim for defects in the design or construction of Improvements within the Project against the original builder of the Project, or any architect, engineer or other consultant, or any contractor, subcontractor, or materials supplier engaged by or on behalf of the original builder of the Project, for the design and/or construction of the Project, or any element thereof, or otherwise described in *California Civil Code §§ 896 or 897* as an actionable defect ("**Claim**"), shall be resolved and administered in accordance with *California Civil Code §§ 895 through 945.5*, and *California Civil Code §§ 1375 and 1375.1*, as such sections may be amended, revised, or superseded from time to time.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area. Any recovery by the Association with respect to any damage to or defect in the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

(c) **Notices to Members of Legal Proceedings Against Declarant.** In accordance with *California Civil Code § 1368.5*, at least thirty (30) days prior to filing any civil action, including arbitration, against Declarant or the original developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Residential Units, which the Association is required to maintain, or (iii) the Residential Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Residential Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each 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 the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

(d) **Arbitration of Disputes.** If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) Costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) A neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA. In selecting the arbitrator, the provisions of *California Code of Civil Procedure § 1297.121* shall apply. An arbitrator may be challenged for any of the grounds listed in the *California Code of Civil Procedure § 1297.121*, or in *§ 1297.124*;

(3) Venue of the arbitration to be in San Diego County, California;

(4) The arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of the AAA, or if the rules do not specify a date by which

arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10)-day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) The arbitration shall be conducted in accordance with the Commercial Rules of the AAA;

(6) The arbitration shall be conducted and concluded in a prompt and timely manner;

(7) The arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable;

(9) **Preliminary Procedures**. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. Nothing contained herein shall be deemed a waiver or limitation of the provisions of *California Civil Code §§ 1368.4, 1375, 1375.05, or 1375.1*;

(10) **Participation by Other Parties**. An Owner, the Association, and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) **Federal Arbitration Act**. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Project evidences a transaction involving interstate commerce and the Federal Arbitration Act (*9 U.S.C. §§ 1 et seq*) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein; and

(12) **AGREEMENT TO ARBITRATE. BY EXECUTING THIS DECLARATION, DECLARANT, AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER, AND THE ASSOCIATION SHALL BE DEEMED TO**

HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND DECLARANT, THE ASSOCIATION, AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION, AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, THE ASSOCIATION, AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION, OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION, OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

ARTICLE XII
UTILITIES

12.1 Owners' Rights and Duties. The rights and duties of the Residential Units within the Project with respect to water, sanitary sewer, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (hereinafter referred to collectively as "**Utilities Facilities**") shall be as follows:

(a) Whenever Utilities Facilities are installed within the Project, which Utilities Facilities or any portion thereof lie in or upon a Residential Unit owned by other than the Owner of any Residential Unit served by said Utilities Facilities, the Owners of any Residential Unit served by said Utilities Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said Utilities Facilities as and when necessary.

(b) Whenever Utilities Facilities are installed within the Project which Utilities Facilities serve more than one (1) Residential Unit, the Owner of each Residential Unit served by said Utilities Facilities shall be entitled to the full use and enjoyment of such portions of said Utilities Facilities as service his Residential Unit. The Association shall be responsible for the maintenance of all shared Utilities Facilities as indicated on Maintenance Responsibility Chart.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said Utilities Facilities, or with respect to the sharing of the cost thereof, then, upon written request of one such Owner addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association and the decision of the arbitrator(s) shall be final and conclusive on the parties. The costs for such arbitration shall be paid for by the Owners in accordance with the rules of the American Arbitration Association.

12.2 Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded Map of the property and/or Certificate of Compliance in lieu thereof, and as may be hereafter required or needed to service the Project are hereby reserved by Declarant and its successors and assigns, until the sale of the first Residential Unit, and thereafter by the Association, together with the right to grant and transfer the same. Said easements shall be in favor of Declarant, and its successors and assigns for the benefit of the Project and for the benefit of the Association with respect to the Common Area(s) transferred to or controlled by the Association. These easements are in addition to and cumulative with the easements set forth at Article II above.

12.3 Association's Duties. The Association shall maintain all Utilities Facilities located in the Common Area except for those installations maintained by utility companies; public, private, or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Residential Units. Owners shall maintain the heater and air-conditioning system, if any, servicing their respective Residential Units, residences situated thereon, and all light fixtures and appliances therein.

ARTICLE XIII
DESTRUCTION OF IMPROVEMENTS

13.1 Reconstruction with Election of Owners. In the event of total or partial destruction of the Improvements in the Project wherein the cost of reconstruction exceeds the insurance proceeds available by Two Hundred Fifty Thousand Dollars ($250,000) or more, a special meeting shall be called for the purpose of having the Owners vote on whether or not to repair the damage. Said meeting shall be called within forty-five (45) days of said destruction, or as may be reasonably possible under the circumstances. If reconstruction is to take place, as approved by a majority of the Owners, the Board shall be required to execute, acknowledge, file, and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

13.2 Reconstruction Assessments. If a majority of Owners determine to rebuild or the cost of reconstruction does not exceed the insurance proceeds available as set forth in this Article XIII, then each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the costs of reconstruction over and above the insurance proceeds and the proportionate share to be paid by each Owner shall be levied upon the basis of each Owner's interest in the Common Area. In the event of failure or refusal by any Owner to pay his proportionate share of the costs, after notice to him and should failure or refusal continue for a period of sixty (60) days, the Board may levy a Special Assessment against such Owner which may be enforced under the lien provisions contained in this Declaration and the Bylaws.

13.3 **Obligation of Board.** If a majority of Owners determine to rebuild, the Board shall obtain bids from at least three (3) reputable contractors and shall award construction work to the contractor, determined by the Board in its sole discretion, to be most suitable. The Board shall have authority to enter into a written contract with said contractor for such reconstruction work and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible time.

13.4 **Determination Not to Rebuild.** If vote of a majority of Owners shall be insufficient to authorize rebuilding, the following shall apply:

(a) **Distribution of Insurance Proceeds.** Subject to the rights of Mortgagees, any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual lenders by the Board according to the value of each Residential Unit in relation to the value of all Residential Units, according to each Residential Unit's fair market value. If a majority of Owners elect to rebuild, the Board shall then file and record a certificate as provided in Section 13.1 above; and

(b) **Recordation of Certificate Not to Rebuild.** The Board shall have the duty within one hundred twenty (120) days of the date of such loss to execute, acknowledge, and record a certificate setting forth the determination of the Owners not to rebuild and shall promptly cause to be prepared and filed such revised Maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more Residential Units as a result of such destruction.

13.5 **Revival of Right to Partition Residential Unit.** Upon recordation of such certificate, the right of any Owner to partition his Residential Unit through legal action shall forthwith revive.

13.6 **Condemnation.** In the event an action for condemnation of the entire Project, or a portion thereof, is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply: (a) upon the unanimous consent of all Owners, the Project or portion thereof, may be sold to such governmental body prior to judgment, and (b) the proceeds of such condemnation or sale shall be distributed to the Owners, according to their proportionate interest in the Project, or portion thereof, which was the subject of the government action.

ARTICLE XIV
SUSPENSION OF THE RIGHT OF PARTITION

14.1 The right of partition of the Common Area is hereby suspended pursuant to *California Civil Code § 1359.* The Project may be partitioned and sold as a whole, pursuant to the provisions of said section of the California Civil Code as presently enacted or subsequently amended upon a showing of the occurrences of any one of the events therein provided. Additionally, partition may be had of the Project upon the showing that the conditions for such partition by sale set forth in Article XIII have been met. Nothing herein contained shall prevent the partition or division of interest between joint or common Owners of one Residential Unit.

ARTICLE XV
PROHIBITIONS AGAINST SEVERABILITY OF COMPONENT INTEREST IN UNIT

15.1 **Prohibition of Severance.** No Owner shall be entitled to sever his Residential Unit from his undivided interest in the Common Area for any purpose. Neither of said component interest may be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with, and any violation or attempted violation of this provision shall be void and of no effect. The purpose of this Section 15.1 is to restrict severability in accordance with the provisions of *California Civil Code § 1358(g)*.

15.2 **Conveyance of Entire Residential Unit.** Subsequent to the initial sales of the Residential Units, any conveyance of a Residential Unit or the component interests in the Common Area by the Owner of any Residential Unit shall be presumed to convey the entire Residential Unit; provided, however, that nothing contained herein shall be construed to preclude the Owner of any Residential Unit from creating a co-tenancy in the ownership of said Residential Unit with any other person or persons.

ARTICLE XVI
TERM OF DECLARATION - COMPLIANCE WITH RULE AGAINST PERPETUITIES AND RESTRAINTS OF ALIENATION

16.1 The covenants contained herein shall run with the land and shall be binding upon all parties and all persons claiming under them until May 23, 2028, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years. However, at least 67% of the votes of Owners and Eligible Mortgage Holders on Units to which at least 67% of the votes of Units subject to a mortgage pertains is required to terminate this Declaration. The recording of a recordation of a cancelling or terminating Declaration shall be conclusively and presumptively valid as to anyone relying thereon in good faith.

ARTICLE XVII
PROTECTION OF LENDERS

17.1 **Written Notification to First Lenders.** A First Lender, upon written notice to the Association, is entitled to timely written notice from the Board of Directors of the following actions: (i) any proposed amendment to the Governing Documents effecting a change in the boundaries of any Unit or the Exclusive Use Areas, the interest pertaining to a Unit, the liability for Common Area Expenses, the number of votes in the Association pertaining to a Unit or the purposes to which any Unit or the Common Area are restricted; (ii) any proposed termination of the condominium regime;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Community or a Unit to which there is a Mortgage held by an Eligible Mortgage Holder; (iv) any delinquency in the payment of Assessments or charge owed by an Owner of a Unit subject to a First Mortgage where such delinquency has continued for a period of at least sixty (60) days; and (v) any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to Section 6.1(c) herein.

17.2 **Exemption from Right of First Refusal.** Any First Lender which comes into possession of the Residential Unit pursuant to the remedies provided in the mortgage or judicial foreclosure of the mortgage shall be exempt from any right of first refusal, if such right exists in the Governing Documents and First Lender's right to sell or lease the Residential Unit shall not be impaired by any right of first refusal.

17.3 **Subordination of Assessment Lien to Mortgages.** Any First Lender which comes into possession of the Residential Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for more than six (6) months of the unpaid Assessments or charges against the mortgaged Residential Unit which accrue prior to the time such holder comes into possession of the Residential Unit. The lien Assessments, including, but not limited to, interest, late charges, Reasonable Costs of Collection, and attorney's fees, provided for herein, shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed on the Residential Unit; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Residential Unit pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such Residential Unit from liability for any Assessments thereafter becoming due or from the lien of any such subsequent Assessment.

17.4 **Prior Approval of Eligible Mortgage Holders.** As all votes in the Association have been allocated, the approval of First Mortgage Holders on fifty-one (51%) of the Units subject to a First Mortgage shall be required (i) to materially amend any provisions of this Declaration or the Bylaws or to add any material provisions thereto which establish, provide for, govern or regulate any of the following (1) voting of the Membership; (2) Assessments, assessment liens or subordination of such liens; (3) reserves for maintenance, repair and replacement of the common elements; (4) insurance or fidelity bonds (if any); (5) rights to use the Common Areas; (6) responsibility for maintenance and repair of the portions of the Units and Exclusive Use Areas; (7) expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime; (8) boundaries of any Unit; (9) the interest in general; (10) convertibility of Units into Common Area or of Common Area (including Exclusive Use Area) into Units; (11) leasing of Units; (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit in the Project; or (13) establishment of self-management by the Association where professional management has been required by any of the agencies or corporations with an interest in the Project; and (ii) to modify any portion of this Article XVII.

17.5 **Examination of Books and Records.** First Lenders shall have the right to examine the books and records of the Association. Upon written request by First Lenders, the Association shall prepare and furnish within a reasonable period of time, audited financial statements for the immediately preceding fiscal year.

17.6 **Reserves for Replacement.** An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by Regular Assessments rather than by Special Assessments.

17.7 **Taxes, Assessments, and Charges.** All taxes, Assessments, and charges which may become liens prior to the First Lender under the local law shall relate only to the individual Residential Units and not to the Project as a whole.

17.8 **No Priority Over Rights of First Lenders.** No provision herein shall give an Owner, or any other party, priority over any rights of First Lenders of Residential Units, pursuant to their mortgage, in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Residential Units and/or the Common Area.

17.9 **Conflict.** If there is any conflict between any provisions of this Article XVII and any other provisions in this Declaration, or the Bylaws of the Association, the language contained in this Article XVII, "Protection of Lenders," shall control.

ARTICLE XVIII
BREACH

18.1 **Right of Entry.** Violations of any of the provisions, conditions, restrictions, covenants, easements, or reservations contained herein shall give to Declarant, its successor, or the Association the right to enter upon the Residential Unit to which such violation exists and to abate and remove, at the expense of the Owner thereof, any erection, thing, or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof. Such entry shall be made only after seventy-two (72) hours notice has been given to said Owner, with as little inconvenience to the Owner as possible, and any damage caused thereby shall be repaired by the Association. Declarant or its successors shall not thereby be deemed guilty by any Member of trespass by such entry, abatement, or removal.

18.2 **Nuisance.** Every act or omission which violates, in whole or in part, any provision, condition, restriction, covenant, easement, or reservation herein is hereby declared to be and constitutes a nuisance, either public or private, and shall be remedied accordingly by Declarant, its successor, or the Association. Such remedy shall be deemed cumulative and not exclusive.

18.3 **Right of Lien Holder.** A breach of any of the provisions, conditions, restrictions, covenants, easements, or reservations herein contained shall not affect or impair the lien or charge of any bona fide First Lender or first deed of trust, made in good faith and for value, on any of the

Residential Units; provided, however, that any subsequent Owner of the Residential Unit shall be bound by these provisions, conditions, restrictions, covenants, easements, and reservations whether such Owner's title was acquired by foreclosure, trustee's sale, or otherwise.

18.4 **Enforcement.** In the event of a breach of any of the provisions, conditions, restrictions, easements, covenants, or restrictions hereby established, which is continued for thirty (30) days, the Board may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach are inadequate. The restrictions provide for and bind all Owners.

ARTICLE XIX
AMENDMENT

19.1 **Subsequent to the Organizational Meeting.** Subsequent to the Close of Escrow of the first escrow, each and all of the covenants, conditions, and restrictions contained herein may be modified, amended, augmented, or deleted in the following manner and not otherwise: by vote of seventy-five percent (75%) of the voting power of the Association and seventy-five percent (75%) of the votes of Members other than Declarant, and such prior approval of the beneficiaries of first deeds of trusts, as is required by Article XVII which may then be of record as valid encumbrances against said Project or any part or portion thereof, subject only to the qualification that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause or provision; and provided further, only after approval by the DRE pursuant to *California Business and Professions Code § 11018.7*, if applicable. Said amended Declaration or amendment of Declaration shall not be effective for any purpose unless and until recorded in the office of the County Recorder, but shall thereafter be conclusive and presumed to be valid as to anyone relying thereon in good faith. The written approval endorsed on any such amendment and acknowledged by a notary, shall be sufficient compliance with the provisions of this Section 19.1.

19.2 **Prior to the Organizational Meeting.** Prior to the Close of Escrow of the first escrow, Declarant shall have the right to amend this Declaration by executing and recording, with the consent of beneficiaries of all trust deeds then of record, the desired amendment thereto, after receiving prior written approval of the DRE and any other state administrative agency then having regulatory jurisdiction over said Project. The recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith.

19.3 **Approval of the City or County.** Any amendment which would defeat the obligation of the Association to maintain the Common Area in a first-class condition and in a good state of repair, which would affect the provisions of Article XXIV herein or which would defeat the assessment procedure to insure said maintenance, must first be approved in writing by the City of San Diego or County of San Diego, as the case may be, within which the Project is situated.

ARTICLE XX
EFFECTIVENESS OF CREATION OF PROJECT

20.1 The creation of the Project shall become effective upon the first conveyance of a deed by Declarant of a Residential Unit, as provided herein and thereafter, and until conveyance of all Residential Units included in this Project. It is understood that Declarant shall for all purposes be the Owner of the remaining Residential Units until conveyed by Declarant and shall have all rights and benefits of the Owners of such Residential Units until conveyed by Declarant to some other Person.

ARTICLE XXI
BINDING EFFECT OF COVENANTS, CONDITIONS, AND RESTRICTIONS

21.1 Each Owner and any successor-in-interest to said Owner takes his right, title, interest, and estate subject to all covenants, conditions, and restrictions set forth herein, and agrees to perform and to be bound thereby. The covenants and restrictions imposed hereby constitute a general scheme for the benefit of each Owner in the Project and are or will be imposed upon the first Owner of any Residential Unit by express covenants of the deed received from Declarant. Said covenants, conditions, and restrictions may be enforced by the Association, the Board, or by any Owner or any combination of Owners. Said covenants, conditions, and restrictions shall be a burden on and a benefit to, not only each of the original purchasers of Units, but also their grantees and all subsequent Owners of Residential Units. All covenants, conditions, and restrictions herein are intended to and shall constitute covenants running with the land or equitable servitudes on the land, as the case may be, and are intended to and shall be binding on any future Owners of any Residential Units.

ARTICLE XXII
ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS

22.1 **Consideration by Board of Directors.** In the event that: (a) any refurbishment of the Improvements located on the Project are not completed prior to the issuance of a Final Subdivision Public Report by the DRE for the sale of memberships in the Association and (b) the Association is obligee under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment to complete the Improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement in the Project, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

22.2 **Consideration by the Members.** A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association. A vote by Members of the Association other than Declarant shall be taken at such special meeting.

A vote of a majority of the voting power of the Association other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of this Association.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first hereinabove written.

1702 National Ave, LLC
a California limited liability company

By: California Capital Real Estate Advisors, Inc.,
a California corporation, its Managing Member

Edward M. Aloe, Its President

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On APRIL 7, 2010, before me, ALLEN SARKISSIAN, Notary Public, personally appeared EDWARD M. ALOE, ITS PRESIDENT. who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

ALLEN SARKISSIAN
Commission # 1882679
Notary Public - California
Los Angeles County
My Comm. Expires Apr 2, 2014

SUBORDINATION

The undersigned, as beneficiary of the beneficial interest in and under that certain Deed of Trust dated and recorded on January 4, 2010 as Document Number 2010-0000079 in the Official Records of San Diego County, California ("**Deed of Trust**") which Deed of Trust is by and between California Capital Real Estate Advisors, Inc., a California corporation, as Trustor, Preferred Bank as, as Trustee, and Preferred Bank, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing First Amended and Fully Restated Declaration of Establishment of Covenants, Conditions and Restrictions ("**Declaration**") and to the maintenance and other easements to be conveyed to the Association in accordance with the Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Property by foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, and any recorded amendments thereto, which shall remain in full force and effect.

Dated: April 6th, 2010

BENEFICIARY:

Preferred Bank

By:

Name: Bonnie Liu

Its: AVP

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On 4-6-10, before me, Julia Chang, Notary Public, Notary Public, personally appeared Bonnie Liu who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

JULIA CHANG
Commission # 1847206
Notary Public - California
Los Angeles County
My Comm. Expires May 1, 2013

EXHIBIT "A"
Maintenance Responsibility Chart

IMPROVEMENTS	RESPONSIBLE PARTY ASSOCIATION	OWNER
1. Maintain, repair, and replace the interior of the Residential Unit including, without limitation, mechanical elements, appliances, interior surface of the walls, floors, ceilings, and fixtures attached to such walls, floors, and ceilings such as cabinetry, counters, ceiling fans and curtain rods.		X
2. Maintain, repair and replace any mechanical elements exclusively servicing the Residential Unit.		X
3. Maintain, repair, and replace Utility Facilities which exclusively service a Residential Unit (including those located within a Common Area wall).		X
4. Maintain, repair, and replace Utility Facilities shared between Residential Units and Exclusive Use Areas	X Association shall oversee any and all maintenance, repair and replacement, and shall be responsible for the portion of Utility Facilities which service more than one Residential Unit.	X – The costs of such shall be shared equally between the affected Residential Unit Owners.
5. Maintain, repair, and replace the doors and windows enclosing a Residential Unit including frames, tracks, exterior screens of glass doors and windows.		X
6. Periodically clean the exterior windows of the Residential Units and the Common Area.	X – Only windows that are either not accessible by a Residential Unit or not located within the Exclusive Use Area	X - Windows and sliding doors which are within the Exclusive Use Area and/or are accessible by the Residential Unit
7. Maintain, repair, and replace the garage door, garage door opener, and garage lift.		X
8. Maintain the established system of drainage within the Owner's Exclusive Use Area so that the water positively drains toward the drain.		X
9. Maintain the established level of grading for dirt, mulch or other such landscaping to preclude holding moisture in the walls (dirt or ground cover shall not be increased by the homeowner from the established level at the time of original purchase).		X

IMPROVEMENTS	RESPONSIBLE PARTY ASSOCIATION	OWNER
10. Periodically inspect, maintain, repair, and replace all components of the Exclusive Use Grated Decks and Exclusive Use Wood Decks.	X	
11. Maintain, repair, and replace interior and exterior of the fencing and walls in the Project.	X Association maintains the exterior of the fencing in the yards	X Owner maintains the interior of the fencing in the yards
12. Maintain, repair, and replace the centrally metered utilities and mechanical/electrical equipment serving the Common Areas.	X	
13. Maintain, repair, and replace exterior light fixtures.	X Association responsible only for Common Areas (excluding Exclusive Use Areas); replacement of all light fixtures with Association's prior approval	X Owner responsible for fixtures within the Exclusive Use Areas associated with Residential Unit
14. Maintain, repair, and replace the Common Area cluster mailboxes, and storm drains (including fossil filters and other Post-Construction BMPs defined in the Water Quality Report), signage and Utility Facilities not maintained by public utilities or the Owners pursuant to this Declaration.	X	
15. Maintain, repair, and replace shared walls between the Residential Units.	Association shall oversee any maintenance, repair, and replacement.	X Owners of the shared walls shall be responsible for the cost
16. Maintain, repair, and replace the exterior finishes of shared walls between Residential Units.		X
17. Maintain, repair, and replace Exclusive Use Area Stairs and Decks.	X	
18. Maintain, repair, and replace Exclusive Use Yards and Planters.		X
19. Maintain, repair, and replace roofs and roof access ways.	X	
20. Painting of exterior walls of the Project, including garage doors, and front doors to Units.	X	

All work performed by an Owner shall be performed in accordance with this Declaration and with the prior approval of the Association. In the event the Association or its representatives requests or otherwise contacts a vendor to perform work on an Owner's Residential Unit, which work is the responsibility of that Owner, the Owner shall be separately billed for such work regardless of the fact that the Association may have contacted the vendor to perform such work.

7747

Exhibit "B"
Legal Description

LOT 1 OF SIGSBEE ROW, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, ACCORDING TO MAP THEREOF NO. 15442, FILED IN THE OFFICE OF THE COUNTY RECORDER, OF SAN DIEGO COUNTY ON SEPTEMBER 20, 2006.

6

DOC # 2010-0248134

RECORDING REQUESTED BY:

MAY 18, 2010 8:00 AM

STEWART TITLE COMPANY

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 30.00

WHEN RECORDED MAIL TO:

PAGES: 8

BRIAN D. GREENBERG, ESQ.
ONE AMERICA PLAZA
SUITE 940
600 WEST BROADWAY
SAN DIEGO, CA 92101-3362

6236

#279299

Space Above for Recorder's Use

FIRST AMENDMENT

TO

AMENDED AND FULLY RESTATED

DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND

RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC.

THIS FIRST AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC. ("First Amendment") is made by 1702 National Ave, LLC, a California limited liability company ("Declarant").

5/7/10

RECITALS

A. WHEREAS, Declarant caused to be recorded the AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC. on April 13, 2010 as DOC #2101-0181519 in the Official Records, San Diego County Recorder's Office ("Declaration").

B. WHEREAS, the real property which is the subject of the Declaration is located in the City of San Diego, County of San Diego, State of California and is described as follows:

Lot 1 of Sigsbee Row, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15442, filed in the office of the County recorder of San Diego County, September 20, 2006.

APN: 538-050-36-00

C. WHEREAS, ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**., provides that prior to the Close of Escrow of the first escrow, Declarant shall have the right to amend this Declaration by executing and recording, with the consent of beneficiaries of all trust deeds then of record, the desired amendment thereto, after receiving prior written approval of the DRE and any other state administrative agency then having regulatory jurisdiction over said Project. The recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith.

D. WHEREAS, as of the date of the recordation of this First Amendment there has not been a Close of Escrow of the first escrow.

E. WHEREAS, the purpose of this First Amendment is to conform the Declaration to VA/FHA/Fannie Mae requirements.

F. NOW, THEREFORE, in accordance with ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**., the Declaration is hereby amended as follows.

1. The first paragraph on page 1 is hereby amended to read as follows:

"THIS FIRST AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Superceded Declaration"), dated April 7, 2010, is made by 1702 National Ave, LLC, a California limited liability company, (successor "Declarant") amends and fully restates the Declaration of Establishment of Covenants, Conditions and Restrictions recorded on May 23, 2007 as Instrument No. 07-0350188 in the Official Records of the San Diego County Recorder's office ("Original Declaration")."

2. The following Section 1.66 **FHA**, Section 1.67 **Fannie Mae** and Section 1.68 **VA** are hereby added to ARTICLE I DEFINITION OF TERMS:

"1.66. **FHA**.
FHA shall mean 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.

1.67. **Fannie Mae**.
Fannie Mae shall mean 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.

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

5/7/10

3. ARTICLE VIII, Section 8.4 (e) **Initial Capital Contribution**, is hereby deleted and replaced with the following:

(e) **Capital Contributions to the Association**. Upon acquisition of record title to a Condominium from Declarant, each Owner of a Condominium in the Project shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) of the amount of the then Annual Assessment for that Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association.

4. ARTICLE VIII, Section 8.12 **Transfer of Residential Unit by Sale or Foreclosure**, is hereby deleted.

5. ARTICLE X, Section 10.1 (b) **Commercial Use** is hereby deleted and replaced with the following:

(b) **Live/Work Units**. Units 1,2, 3, 4, 5 and 13 are "Live/Work Units" so that the Owners may engage in any of the following activities: professional home offices, including, but not limited to real estate, photography and/or graphic arts, insurance, engineering, legal or accounting services or similar uses subject to the approval of the Board of Directors.

6. ARTICLE X, Section 10.10 **Business or Commercial Activity**, the first paragraph, on the top of page 36, is hereby deleted.

7. ARTICLE XVII, Section 17.2 **Subordination of Assessment Lien to Mortgages.** is hereby deleted and replaced with the following:

"17.2. **Priority of Assessment Lien**.
The lien of the assessments provided for herein, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any previously Recorded first Mortgage upon one or more Condominiums. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any assessments thereafter becoming due. When the Beneficiary of a first Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such Person. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums including such Person, his successors and assigns."

5/7/10

8. ARTICLE XVII PROTECTION OF LENDERS, is hereby deleted and replaced with the following:

"ARTICLE XVII

FANNIE MAE REQUIREMENTS

Section 17.1 **Rights of Mortgagees and Rights of Guarantors of a Mortgage**. Each Mortgagee and the guarantor of the mortgage on any Unit in the Condominium Project shall be given timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage;

(c) A lapse, cancellation, or material modification of any insurance policy maintained by the homeowners' association; and

(d) Any proposed action that requires the consent of a specified percentage of mortgages.

(e) A first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for unpaid regularly budgeted dues or charges accrued before the acquisition of title to the unit by the mortgagee.

(f) No provision in this Declaration shall give a Condominium Unit Owner or any other party priority over the rights of the first mortgagee of the condominium unit pursuant to its mortgage in the case of payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking a condominium unit and/or common elements.

(g) Any amendment to this Declaration of a material nature to mortgagees must be agreed to by mortgagees that represent at least 51% of the votes of unit estates that are subject to mortgages.

(h) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons must be agreed to by mortgagees that represent at least 51% of the votes of the Unit estates that are subject to mortgages.

(i) Implied approval is assumed when a mortgagee fails to submit a response to any written proposal for an amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested."

9. The following Section 19.4 **VA/FHA Approval**. is hereby added to ARTICLE XIX AMENDMENT:

19.4. **VA/FHA Requirements**. So long as there is a Class B membership, any amendment to this Declaration shall be submitted to and approved by the VA/FHA as defined herein prior to recordation.

This First Amendment is dated May 7, 2010 for identification purposes.

1702 National Ave, LLC
a California limited liability company

By: California Capital Real Estate Advisors, Inc.
a California corporation, its Managing Member

Edward M. Aloe, President

"Declarant"

5/7/10

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On May 12th, 2010, before me, Kelsey Hanson
a Notary Public, personally appeared
Edward Matthew Aloe
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: K Hanson

KELSEY HANSON
Commission # 1777889
Notary Public - California
San Diego County
My Comm. Expires Nov 4, 2011

5/7/10

4

RECORDING REQUESTED BY:

STEWART TITLE COMPANY

WHEN RECORDED MAIL TO:

BRIAN D. GREENBERG, ESQ.
ONE AMERICA PLAZA
SUITE 940
600 WEST BROADWAY
SAN DIEGO, CA 92101-3362

#279299

18
5P
1200

DOC # 2010-0290609

JUN 10, 2010 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 22.00

PAGES: 5

5410

Space Above for Recorder's Use

SECOND AMENDMENT

TO

AMENDED AND FULLY RESTATED

DECLARATION OF ESTABLISHMENT OF COVENANTS CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOTS HOMEOWNERS ASSOCIATION, INC.

THIS SECOND AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, Inc. ("Second Amendment") is made by 1702 National Ave, LLC, a California limited liability company ("Declarant").

6/1/10

RECITALS

A. WHEREAS, Declarant caused to be recorded the AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., on April 13, 2010 as DOC #2101-0181519 in the Official Records, San Diego County Recorder's Office ("Declaration") .

B. WHEREAS, Declarant caused to be recorded the FIRST AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., on May 18, 2010 as DOC #2101-0248134 in the Official Records, San Diego County Recorder's Office ("First Amendment") .

C. WHEREAS, the real property which is the subject of the Declaration is located in the City of San Diego, County of San Diego, State of California and is described as follows:

Lot 1 of Sigsbee Row, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15442, filed in the office of the County recorder of San Diego County, September 20, 2006.

APN: 538-050-36-00

D. WHEREAS, ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**.,provides that prior to the Close of Escrow of the first escrow, Declarant shall have the right to amend this Declaration by executing and recording, with the consent of beneficiaries of all trust deeds then of record, the desired amendment thereto, after receiving prior written approval of the DRE and any other state administrative agency then having regulatory jurisdiction over said Project. The recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith.

E. WHEREAS, as of the date of the recordation of this Second Amendment there has not been a Close of Escrow of the first escrow.

6/1/10

F. WHEREAS, the purpose of this Second Amendment is to correct a typographical error in the First Amendment.

G. NOW, THEREFORE, in accordance with ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**., the Declaration is hereby amended as follows.

1. Paragraph 7 of the First Amendment is hereby deleted.

2. The following new Paragraph 7 is hereby added to the First Amendment:

"7. ARTICLE XVII, Section 17.3 Subordination of Assessment Lien to Mortgages., is hereby deleted and replaced with the following:

"17.3. Priority of Assessment Lien.
The lien of the assessments provided for herein, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any previously Recorded first Mortgage upon one or more Condominiums. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any assessments thereafter becoming due. When the Beneficiary of a first Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such Person. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums including such Person, his successors and assigns."

6/1/10

This Second Amendment is dated June 1, 2010 for identification purposes.

1702 National Ave, LLC
a California limited liability company

By: California Capital Real Estate Advisors, Inc.
a California corporation, its Managing Member

____

Edward M. Aloe, President

"Declarant"

6/1/10

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES

On JUNE 1ST, 2010, before me, ALLEN SARKISSIAN
a Notary Public, personally appeared
EDWARD M. ALOE
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [signature]

ALLEN SARKISSIAN
Commission # 1882679
Notary Public - California
Los Angeles County
My Comm. Expires Apr 2, 2014

6/1/10

3

DOC # 2010-0380112

JUL 28, 2010 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 28.00

7937 PAGES: 5

RECORDING REQUESTED BY:

STEWART TITLE COMPANY

WHEN RECORDED MAIL TO:

FG
5P
1 con

BRIAN D. GREENBERG, ESQ.
ONE AMERICA PLAZA
SUITE 940
600 WEST BROADWAY
SAN DIEGO, CA 92101-3362
7034-278299

Space Above for Recorder's Use

THIRD AMENDMENT

TO

AMENDED AND FULLY RESTATED

DECLARATION OF ESTABLISHMENT OF COVENANTS CONDITIONS AND

RESTRICTIONS FOR BRIDGEVIEW LOTS HOMEOWNERS ASSOCIATION, INC.

THIS THIRD AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, Inc. ("Third Amendment") is made by 1702 National Ave, LLC, a California limited liability company ("Declarant").

7/27/10

RECITALS

A. WHEREAS, Declarant caused to be recorded the AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., on April 13, 2010 as DOC #2101-0181519 in the Official Records, San Diego County Recorder's Office ("Declaration") .

B. WHEREAS, Declarant caused to be recorded the FIRST AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., on May 18, 2010 as DOC #2010-0248134 in the Official Records, San Diego County Recorder's Office ("First Amendment").

C. WHEREAS, Declarant caused to be recorded the SECOND AMENDMENT TO AMENDED AND FULLY RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGEVIEW LOFTS HOMEOWNERS ASSOCIATION, INC., on June 10, 2010 as DOC #2010-0290609 in the Official Records, San Diego County Recorder's Office ("Second Amendment").

D. WHEREAS, the real property which is the subject of the Declaration is located in the City of San Diego, County of San Diego, State of California and is described as follows:

Lot 1 of Sigsbee Row, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15442, filed in the office of the County recorder of San Diego County, September 20, 2006.

APN: 538-050-36-00

E. WHEREAS, ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**.,provides that prior to the Close of Escrow of the first escrow, Declarant shall have the right to amend this Declaration by executing and recording, with the consent of beneficiaries of all trust deeds then of record, the desired amendment thereto, after receiving prior written approval of the DRE and any other state administrative agency then having regulatory jurisdiction over said Project. The recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith.

F. WHEREAS, as of the date of the recordation of this Third Amendment there has not been a Close of Escrow of the first escrow.

G. WHEREAS, the purpose of this Third Amendment is to conform the Declaration to FHA requirements.

H. NOW, THEREFORE, in accordance with ARTICLE XIX, Section 19.2 **Prior to the Organizational Meeting**., the Declaration is hereby amended as follows.

1. The following ARTICLE XXIII is hereby added to the Declaration:

"ARTICLE XXIII

FHA REQUIREMENTS

23.1. **Non-Residential Use Limitations**. Each Owner of a Condominium is hereby advised on the following non-residential use limitations imposed on the Live/Work Units and the entire Project. HUD Handbook 4905.1, Section 2-6 and Section 203 (b) of the National Housing Act (24 CFR 203) require that any nonresidential use of the property shall be subordinate to its residential use and character. A property, any portion of which is designed or used for nonresidential purposes is eligible only if the type or extent of the nonresidential use does not impair the residential character of the property. Areas designed or used for nonresidential purposes shall not exceed twenty-five percent (25%) of the total floor area. Storage areas or similar spaces which are integral parts of the nonresidential portion shall be included in the total nonresidential area. In addition, U.S. Department of Housing and Urban Development Mortgagee Letter 2009-46B, paragraph V Eligibility Requirements, subparagraph 4, Commercial Space, provides that no more than twenty-five percent (25%) of the property's total floor area in a project can be used for commercial purposes. The commercial portion of the Project must be of a nature that is homogenous with residential use, which is free of adverse conditions to the occupants of the individual condominium units. Based on the foregoing, each of the Live/Work Units (Units 1 to 5, inclusive, and Unit 13) are hereby restricted in their usage so that areas designed or used for nonresidential purposes shall not exceed twenty-five percent (25%) of the total floor area. Based on the foregoing, no more than twenty-five percent (25%) of the property's total floor area in this Project shall be used for commercial purposes."

7/27/10

This Third Amendment is dated July 27, 2010 for identification purposes.

1702 National Ave, LLC
a California limited liability company

By: California Capital Real Estate Advisors, Inc.
a California corporation, its Managing Member

Edward M. Aloe, President

"Declarant"

7/27/10

7941

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Diego)

On July 27, 2010, before me, C. Waider
a Notary Public, personally appeared
Edward M. Aloe
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: C. Waider

MGC1 C. WAIDER COMM. # 1704313 NOTARY PUBLIC - CALIFORNIA SAN DIEGO COUNTY COMM. EXPIRES NOV. 21, 2010 MGC1

7/27/10