

BUYER DOES NOT NEED TO  
SIGN/SUBMIT THE ATTACHED  
DISCLOSURES WITH THE  
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ONLY TO BE REVIEWED BY  
BUYER PRIOR TO MAKING AN  
OFFER ON THE PROPERTY



# SQUARE FOOTAGE AND LOT SIZE ADVISORY AND DISCLOSURE



(C.A.R. Form SFLS, Revised 12/24)

Property Address: 425 W Beech St #1201, San Diego, CA 92101 ("Property")

- DIFFERENT SOURCES OF SQUARE FOOTAGE MEASUREMENTS:** Measurements of structures vary from source to source and that data is often contradictory. There is no one "official" size source or a "standard" method of calculating exterior structural size, interior space or square footage. Buyer should not rely on any advertised or disclosed square footage measurements and should retain their own experts to measure, as applicable, structure size and square footage during their investigation period, if any. This is especially important if Buyer is using square footage to determine whether to purchase the Property or are using a price per square foot to determine purchase price. Price per square foot calculations are generally broad estimates only, which can vary greatly depending upon property location, type of property and amenities. Such calculations should not be relied upon by Buyer and the accuracy of any such figures should be independently verified by Buyer with their own experts including, but not limited to, a licensed appraiser.
- PROPERTY (LOT) SIZE, DIMENSIONS, CONFIGURATIONS, AND BOUNDARIES:** Fences, hedges, walls, retaining walls, and other barriers or markers may not correspond with any legally-defined property boundaries. Existing structures or amenities may not be located within the actual property boundaries or local setback requirements. If lot size, dimensions, property configurations, boundary lines, and locations of improvements are important to Buyer's decision to purchase or the price Buyer is willing to pay, then Buyer should independently investigate by retaining the services of a licensed surveyor, the only professional who can accurately determine lot dimensions, boundary locations and acreage for the Property.
- BROKER OBLIGATIONS:** Brokers and Agents do not have expertise in determining the exact square footage and lot size. Broker has not and will not verify the accuracy of any numerical statements regarding square footage, room dimensions, or lot size, or the location of boundaries.
- DISCLOSURE OF MEASUREMENTS AND SOURCES:** Square footage and/or lot size numbers inserted into the spaces below, if any, were taken from the referenced source and may be approximations only. Other measurement sizes may exist from other sources.

Source of Information	Sq. Footage	Lot Size	Additional Information	If checked, report attached
Public Record	975	Common	CRS Data	<input type="checkbox"/>
Multiple Listing Service				<input type="checkbox"/>
Seller			Measurement comes from the following source:	<input type="checkbox"/>
Appraisal #1				<input type="checkbox"/>
Appraisal #2				<input type="checkbox"/>
Condominium Map/Plan				<input type="checkbox"/>
Architectural Drawings				<input type="checkbox"/>
Floor Plan/Drawings				<input type="checkbox"/>
Survey				<input type="checkbox"/>
Other				<input type="checkbox"/>
Other				<input type="checkbox"/>

By signing below, Seller: (i) represents that Seller is not aware of any other measurements of the Property; and (ii) acknowledges that Seller has read, understands, and received a Copy of this Square Footage and Lot Size Advisory and Disclosure. Seller is encouraged to read it carefully.

Seller Kimberly Jayne Evans  Date 02/09/2026  
 Seller Miguel Javier Humara  Date 02/09/2026

By signing below, Buyer acknowledges that Buyer has read, understands, and received a Copy of this Square Footage and Lot Size Advisory and Disclosure. Buyer is encouraged to read it carefully. IF NO INFORMATION IS PROVIDED AND/OR ANY OF THESE MEASUREMENTS ARE MATERIAL TO BUYER, BUYER IS STRONGLY ADVISED TO INVESTIGATE THE VALIDITY, ACCURACY, OR EXISTENCE OF ANY MEASUREMENTS PROVIDED HEREIN OR OTHERWISE. IF BUYER DOES NOT DO SO, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS AND AGENTS.

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_

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SFLS REVISED 12/24 (PAGE 1 OF 1)

## SQUARE FOOTAGE AND LOT SIZE ADVISORY AND DISCLOSURE (SFLS PAGE 1 OF 1)



# PARKING AND STORAGE DISCLOSURE

(C.A.R. Form PSD, Revised 6/23)

BERKSHIRE HATHAWAY HOMESERVICES CALIFORNIA PROPERTIES

This disclosure is made in connection with the Purchase Agreement or  other \_\_\_\_\_ ("Agreement"), dated \_\_\_\_\_, on property known as 425 W Beech St #1201 ("Property") between \_\_\_\_\_ ("Buyer/Tenant") and Kimberly Jayne Evans, Miguel Javier Humara ("Seller/Housing Provider")

If applicable,  Seller has been using parking space # \_\_\_\_\_  Parking is **not** intended to be included with the Property.  
If applicable,  Seller has been using storage space # \_\_\_\_\_  Separate storage is **not** intended to be included with the Property.

This is a disclosure only. Right to parking or storage, if any, is determined by the Agreement, and if Property is in a planned development or covered by a Home Owner Association, the governing documents.

1. Buyer/Tenant is advised to personally inspect the actual size, shape, numbering, location, and accessibility of the actual parking space(s) or storage area(s). As vehicle sizes and shapes vary greatly, the actual size, shape, numbering, location, and accessibility of the actual parking space(s) may not accommodate Buyer's/Tenant's needs. Seller/Housing Provider and Broker(s) do not warrant that such space(s) or storage areas are suitable for Buyer/Tenant's intended use or meet any minimum requirements.
2. If the Property is located in a multi-unit building or any other planned development, the governing documents for the Property, such as the deed, the condominium map/plan, the covenants, conditions and restrictions, tenancy-in-common agreement, or equivalent document, should contain a description and drawing of all assigned parking and storage spaces. However, the size, shape, numbering, location and accessibility of the designated parking and storage area(s) shown within the governing documents are not always accurate, even if drawn by a licensed surveyor. There may be differences between the descriptions in the governing documents and the actual size, shape, numbering, location and accessibility of the parking spaces and storage areas and between what is assigned and what is being used.
3. Seller/Housing Provider further discloses the following: 1 valet only parking space included in purchase

Seller/Housing Provider Kimberly Jayne Evans *Kimberly Jayne Evans* Date: 02/09/2026

Seller/Housing Provider Miguel Javier Humara *Miguel Javier Humara* Date: 02/09/2026

#### 4. Buyer/Tenant acknowledges that Buyer/Tenant has:

- Reviewed the governing documents and ensured the parking space(s) or storage area(s) are accurately identified;
- Read all disclosures relating to the parking space(s) or storage area(s) provided by Seller/Housing Provider;
- Personally inspected the size, shape, numbering, location, and accessibility of the actual parking space(s) and storage area(s);
- Determined that the parking spaces(s) or storage area(s) are suitable for Buyer's/Tenant's intended use(s). If it is a parking space, Buyer/Tenant has inspected the parking space to ensure that it can accommodate the vehicle(s) that Buyer/Tenant intends to park in the parking space;
- Ensured that the governing documents provide for rights of passage to and from the parking space and storage space, if Buyer/Tenant must pass through another owner's assigned space(s) in order to access Buyer's/Tenant's parking space(s) or storage area(s); and
- Has found no discrepancy between the parking space(s) or storage area(s) as shown in the governing documents and the respective actual size, shape, numbering, location, and accessibility or, if Buyer/Tenant has found such a discrepancy, Buyer/Tenant acknowledges that such discrepancy is not material to this purchase or lease.

**By signing below, Buyer acknowledges Buyer has received, read, and understands this Parking and Storage Disclosure form.**

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

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PSD REVISED 6/23 (PAGE 1 OF 1)

### PARKING AND STORAGE DISCLOSURE (PSD PAGE 1 OF 1)



Property Address: **425 W Beech St #1201, San Diego, CA 92101**

L. Material facts or defects affecting the Property not otherwise disclosed to Buyer .....  Yes  No  
Explanation, or  (if checked) see attached; D-commercial businesses in neighborhood

**7. REPAIRS AND ALTERATIONS: ARE YOU (SELLER) AWARE OF...**

- A. Any alterations, modifications, replacements, improvements, remodeling or material repairs on the Property (including those resulting from Home Warranty claims) .....  Yes  No
- B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? .....  Yes  No
- C. Ongoing or recurring maintenance on the Property See #19 below on page 4 .....  Yes  No  
(for example, drain or sewer clean-out, tree or pest control service)
- D. Any part of the Property being painted within the past 12 months See #19 below on page 4 .....  Yes  No
- E. Whether the Property was built before 1978 (if No, leave (1) and (2) blank).....  Yes  No  
(1) If yes, whether any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (2) blank) .....  Yes  No  
(2) If yes to (1), whether such renovations done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule .....  Yes  No
- F. Whether you acquired the property within 18 months of accepting an offer to sell it.....  Yes  No  
(1) If yes, have any room additions, structural modifications, or other alterations or repairs (collectively "Improvements") been performed by a contractor while you have owned the Property.....  Yes  No

**Note 1:** If yes to F(1), Seller shall provide in the Explanation below: (i) a list of such Improvements and (ii) the name and contact information for each contractor who performed services of \$1,000 or more.  
**Note 2:** If yes to F(1), Seller shall provide in the Explanation below (i) a list of those Improvements for which Seller has obtained permits, and Seller shall attach copies of those permits to this SPQ, and (ii) for those Improvements for which Seller does not have a permit, Seller shall include a statement identifying those Improvements stating that Seller was not provided permits by the third party making the Improvement, and providing the contact information for such third parties from whom the Buyer may obtain those permits.

Explanation, or  (if checked) see attached: wall added in second bath (closed in doorway), replaced flooring, remodeled kitchen

**8. STRUCTURAL, SYSTEMS AND APPLIANCES: ARE YOU (SELLER) AWARE OF...**

- A. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances .....  Yes  No
- B. The existence of a solar power system (if yes, Seller to provide C.A.R. Form SOLAR).....  Yes  No
- C. The leasing of any of the following on or serving the Property: solar power system, water softener system, water purifier system, alarm system, or propane tank(s) .....  Yes  No
- D. An alternative septic system on or serving the Property .....  Yes  No
- E. Whether any structure on the Property other than the main improvement is used as a dwelling .....  Yes  No  
(1) If Yes to E, whether there are separate utilities and meters for the dwelling.....  Yes  No  
(2) If Yes to E, whether the dwelling received a permit or other government approval as an Accessory Dwelling Unit (ADU) .....  Yes  No

Explanation: \_\_\_\_\_

**9. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT: ARE YOU (SELLER) AWARE OF...**

- A. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs .....  Yes  No  
If yes, was federal flood disaster assistance conditioned upon obtaining and maintaining flood insurance on the Property .....  Yes  No  
(NOTE: If the assistance was conditioned upon maintaining flood insurance, Buyer is informed that federal law, 42 USC 5154a requires Buyer to maintain such insurance on the Property and if it is not, and the Property is damaged by a flood disaster, Buyer may be required to reimburse the federal government for the disaster relief provided.)
- B. Receiving domestic water storage tank assistance pursuant to § 13194 of the Water Code or whether the real property ever received such assistance and the real property currently still has the domestic storage tank.....  Yes  No  
If yes, the following disclosure is made: (1) This property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, pursuant to § 13194 of the Water Code. (2) The domestic water storage tank was made available to households that had a private water well that had gone dry, or had been destroyed due to drought, wildfire, other natural disasters, or was otherwise nonfunctioning. (3) The domestic water storage tank provided pursuant to § 13194 of the Water Code might not convey with the real property. (4) Due to the water well issues that led to this property obtaining assistance pursuant to § 13194 of the Water Code, the buyer is advised to have an inspection of the water well and to have a professional evaluate the availability of water to the property to ensure it suits the purposes for which the buyer is purchasing the property.

Explanation: \_\_\_\_\_

**10. WATER-RELATED AND MOLD ISSUES: ARE YOU (SELLER) AWARE OF...**

- A. Water intrusion, whether past or present, into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property .....  Yes  No
- B. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property..  Yes  No
- C. Rivers, streams, flood channels, underground springs, high watertable, floods, or tides, on or affecting the Property or neighborhood .....  Yes  No

Explanation: A, B - During kitchen remodel, we found mold behind dishwasher. We had it professionally remediated and replaced all appliances, cabinetry, flooring and countertops. Mold clearance test performed and passed/cleared





Property Address: **425 W Beech St #1201, San Diego, CA 92101**

**16. NEIGHBORS/NEIGHBORHOOD:**

**ARE YOU (SELLER) AWARE OF...**

- A. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: Neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife .....  Yes  No
  - B. Any past or present disputes or issues with a neighbor which might impact the use, development and enjoyment of the Property .....  Yes  No
- Explanation: A-downtown noises/urban living

**17. GOVERNMENTAL:**

**ARE YOU (SELLER) AWARE OF...**

- A. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property .....  Yes  No
  - B. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions or retrofit requirements that apply to or could affect the Property .....  Yes  No
  - C. Existing or contemplated building or use moratoria that apply to or could affect the Property .....  Yes  No
  - D. Any state or local requirements or restrictions relating to the future replacement of existing gas-powered appliances that are being transferred with the property. Gas-powered appliances include, but are not limited to, appliances fueled by natural gas or liquid propane .....  Yes  No
  - E. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property .....  Yes  No
  - F. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways and traffic signals .....  Yes  No
  - G. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal or cutting or (iii) that flammable materials be removed .....  Yes  No
  - H. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property.....  Yes  No
  - I. Whether the Property is historically designated or falls within an existing or proposed Historic District .....  Yes  No
  - J. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies .....  Yes  No
  - K. Any differences between the name of the city in the postal/mailling address and the city which has jurisdiction over the property .....  Yes  No
- Explanation: \_\_\_\_\_

**18. OTHER:**

**ARE YOU (SELLER) AWARE OF...**

- A. Any occupant of the Property smoking or vaping any substance on or in the Property, whether past or present ....  Yes  No
  - B. Any residue, which may be indicated by smell or test results, from smoking tobacco or nicotine products, which includes the use of an electronic cigarette or vape device.....  Yes  No
  - C. Any use of the Property for, or any alterations, modifications, improvements, remodeling or material change to the Property due to, cannabis cultivation or growth .....  Yes  No
  - D. Whether the Property was originally constructed as a Manufactured or Mobile home .....  Yes  No
  - E. Whether the property is tenant occupied .....  Yes  No
  - F. Whether the Property was previously tenant occupied even if vacant now .....  Yes  No  
If yes, disclose if you know the method or manner of how the tenancy ended.
- Explanation: \_\_\_\_\_

**19. MATERIAL FACTS:**

- A. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer .....  Yes  No
  - B.  (IF CHECKED) **ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.
- Explanation: 7 C- We service the HVAC every six months; D- Paint touch ups as needed

**Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.**

Seller Kimberly Jayne Evans Date 02/12/2026  
 Seller Miguel Javier Humara Date 02/12/2026

**By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.**

Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (CALIFORNIA CIVIL CODE §1102, ET SEQ.) (C.A.R. Form TDS, Revised 6/24)



This property is a duplex, triplex or fourplex. A TDS is required for all units. This TDS is for ALL units (or only unit(s) ).

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF San Diego, COUNTY OF San Diego, STATE OF CALIFORNIA, DESCRIBED AS 425 W Beech St #1201, San Diego, CA 92101

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 1102 OF THE CIVIL CODE AS OF (DATE) 02/12/2026. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to § 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
Additional inspection reports or disclosures:

No substituted disclosures for this transfer.

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller is is not occupying the property.

A. The subject property has the items checked below:\*

- Range, Oven, Microwave, Dishwasher, Trash Compactor, Garbage Disposal, Washer/Dryer Hookups, Rain Gutters, Burglar Alarms, Carbon Monoxide Device(s), Smoke Detector(s), Fire Alarm, TV Antenna, Satellite Dish, Intercom, Central Heating, Central Air Conditioning, Evaporator Cooler(s), Wall/Window Air Conditioning, Sprinklers, Public Sewer System, Septic Tank, Sump Pump, Water Softener, Patio/Decking, Built-in Barbecue, Gazebo, Security Gate(s), Garage: Attached, Not Attached, Carport, Automatic Garage Door Opener(s), Number Remote Controls, Sauna, Hot Tub/Spa, Locking Safety Cover, Pool, Child Resistant Barrier, Pool/Spa Heater, Water Heater, Water Supply, Gas Supply, Window Screens, Window Security Bars, Water-Conserving Plumbing Fixtures

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary):

(\*see note on page 2)



Property Address: 425 W Beech St #1201, San Diego, CA 92101

Date: February 12, 2026

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following?  Yes  No. If yes, check appropriate space(s) below.

- Interior Walls  Ceilings  Floors  Exterior Walls  Insulation  Roof(s)  Windows  Doors  Foundation  Slab(s)
- Driveways  Sidewalks  Walls/Fences  Electrical Systems  Plumbing/Sewers/Septics  Other Structural Components

(Describe: \_\_\_\_\_)  
If any of the above is checked, explain. (Attach additional sheets if necessary.): \_\_\_\_\_

\*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with § 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with § 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with § 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. § 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with § 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property . . . . .  Yes  No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property . . . . .  Yes  No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property . . . . .  Yes  No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. . . . .  Yes  No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes . . . . .  Yes  No

(Note to C4 and C5: If transferor acquired the property within 18 months of accepting an offer to sell it, transferor shall make additional disclosures regarding the room additions, structural modifications, or other alterations or repairs on a Seller Property Questionnaire (C.A.R. Form SPQ).)

6. Fill (compacted or otherwise) on the property or any portion thereof . . . . .  Yes  No
7. Any settling from any cause, or slippage, sliding, or other soil problems . . . . .  Yes  No
8. Flooding, drainage or grading problems . . . . .  Yes  No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides . . . . .  Yes  No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements . . . . .  Yes  No
11. Neighborhood noise problems or other nuisances . . . . .  Yes  No
12. CC&R's or other deed restrictions or obligations . . . . .  Yes  No
13. Homeowners' Association which has any authority over the subject property . . . . .  Yes  No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . . .  Yes  No
15. Any notices of abatement or citations against the property . . . . .  Yes  No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to § 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to § 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to § 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to § 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) . . . . .  Yes  No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): 2, 12, 13, 14; property is a condo at Acqua Vista HOA with common walls/areas and CC&R's

11: downtown noises/urban living  
With HOA approval, we closed off a doorway in a bathroom and added a wall

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller  Date 02/12/2026

Seller  Date 02/12/2026

**Miguel Javier Humara**



**III. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the Seller is represented by an agent in this transaction.)

**THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:**

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_

Agent (Broker Representing Seller) Berkshire Hathaway HomeServices California Properties (Please Print)  
 By Art Lewis Date 02/12/26  
 (Associate Licensee or Broker Signature)

**IV. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above.)

**THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:**

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_

Agent (Broker Obtaining the Offer) \_\_\_\_\_ (Please Print)  
 By \_\_\_\_\_ Date \_\_\_\_\_  
 (Associate Licensee or Broker Signature)

**V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.**

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.**

Seller Kimberly Jayne Evans Date 02/12/26  
 Seller Kimberly Jayne Evans Date 02/12/26  
Miguel Javier Humara  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_

Agent (Broker Representing Seller) Berkshire Hathaway HomeServices California Properties (Please Print)  
 By Art Lewis Date 02/12/26  
 (Associate Licensee or Broker Signature)

Agent (Broker Obtaining the Offer) \_\_\_\_\_ (Please Print)  
 By \_\_\_\_\_ Date \_\_\_\_\_  
 (Associate Licensee or Broker Signature)

**§ 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.**

**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.**

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OF COUNSEL  
RONALD M. GREEN\*  
BRYAN R. GERSTEL\*  
CRAIG S. BICKLER\*

January 27, 2026

\* A Professional Corporation  
† Also Licensed in Washington

To Whom It May Concern

**Re: *Litigation Disclosure Letter – Acqua Vista HOA***  
Our File No.: 7031-001

Dear Sir/Madam:

Please be advised this firm serves as counsel for the Acqua Vista Homeowners Association (“Association”). We are providing this letter to disclose litigation that is currently pending against the Association. As of this date, there is one lawsuit pending against the Association.

The lawsuit was filed on or about October 26, 2022, by a then owner (now a former owner since selling his unit) against the Association relating to claims by the owner concerning his parking space, access to Association documents, personal injury, emotional distress, nuisance and issues with the 2021 Board of Directors election. The matter is entitled: *James Dean v. Acqua Vista Homeowners Association* – S.D. Sup. Ct. Case No.: 37-2022-00043125-CU-BC-CTL.

The Association has tendered this matter to its liability carrier and the carrier has hired defense counsel on behalf of the Association. At present, the parties are still conducting discovery on one another and the Association plans to file a dispositive motion on the lawsuit before trial. The Association’s motion is set for August 7, 2026. The parties previously did a mediation in 2024 that was unsuccessful in resolving the matter and there are no further meetings on calendar for the matter. Trial is set for December 4, 2026. At the 2024 mediation the demand from Dean was in the amount of approximately \$2.1 million.

At this point in time, the Association does not expect that the lawsuit will have an impact on the Association’s finances and does not presently foresee the need for any special assessments associated with the matter.

**GREEN & FRENCH, LLP**

Litigation Disclosure Letter

January 27, 2026

Page 2

In the meantime, if you have any questions or concerns regarding this disclosure letter, please do not hesitate to contact the undersigned at any time.

Sincerely yours,

GREEN & FRENCH, LLP



Jeffrey A. French

cc: Board of Directors

JOEL R. BRYANT  
JEFFREY A. FRENCH††  
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OF COUNSEL  
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BRYAN R. GERSTEL\*  
CRAIG S. BICKLER\*

April 15, 2024

\* A Professional Corporation  
† Also Licensed in Colorado  
†† Also Licensed in Washington

To Whom It May Concern

Re: Litigation Disclosure Letter  
Our File: 7031-001

Dear Sir/Madam:

Please be advised this firm serves as counsel for the Acqua Vista Homeowners Association (“Association”). We are providing this letter to disclose litigation that is currently pending against the Association. As of this date, there are two lawsuits pending against the Association.

The first lawsuit was filed on or about August 8, 2022, by an owner against the Association and other parties for water intrusion issues stemming from the alleged negligence of an owner of a unit along with the Association. The lawsuit is limited to two units and primarily concerns the repair of one of the two units. Plaintiff’s claim for monetary damages is still unspecified at this time. The matter is entitled: *Scott Nicholson v. Bayard; Acqua Vista Homeowners Association – S.D. Sup. Ct. Case No.: 37-2022-00031446-CL-MC-CTL*.

The Association has tendered this matter to its liability carrier and the carrier has hired defense counsel on behalf of the Association. At this point in time, the Association does not expect the lawsuit will have an impact on the Association’s finances and we do not foresee any special assessments associated with the matter.

The second matter was filed on or about October 26, 2022, by an owner against the Association relating to claims by the owner concerning his parking space, access to Association documents, and issues with the recent Board of Directors election. The matter is entitled: *James Dean v. Acqua Vista Homeowners Association – S.D. Sup. Ct. Case No.: 37-2022-00043125-CU-BC-CTL*.

The Association has also tendered this matter to its liability carrier and the carrier has hired defense counsel on behalf of the Association. The amount of Plaintiff's demand as of November 1, 2023, was for \$259,000. The Association did not respond to the demand and has filed a dispositive motion seeking to have the entire lawsuit dismissed. The trial for this matter has been set by the court for January 24, 2025, and the parties have a mediation on calendar for July 1, 2024. At this point in time, the Association does not expect that the lawsuit will have an impact on the Association's finances and does not foresee the need for any special assessments associated with the matter.

In the meantime, if you have any questions or concerns regarding this disclosure letter, please do not hesitate to contact the undersigned at any time.

Sincerely yours,

**GREEN BRYANT & FRENCH, LLP**

*/s/ Jeffrey A. French*

Jeffrey A. French

cc: Board of Directors

1 KIRK C. PEARSON (State Bar No. 267135)  
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13 Attorneys for Plaintiff, James Dean

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**12/15/2022** at 01:39:00 PM  
Clerk of the Superior Court  
By Taylor Grandall, Deputy Clerk

14  
15  
16 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF SAN DIEGO**

18 JAMES DEAN, an individual,

19 Plaintiff,

20 vs.

21 ACQUA VISTA HOMEOWNERS  
22 ASSOCIATION, a California nonprofit  
23 corporation; and DOES 1-20, inclusive,

24 Defendants.

Case No.: 37-2022-00043125-CU-BC-CTL

**FIRST AMENDED COMPLAINT FOR:**

- (1) **BREACH OF GOVERNING DOCUMENTS (CIVIL CODE § 5975);**  
(2) **BREACH OF FIDUCIARY DUTY;**  
(3) **FAILURE TO PERMIT INSPECTION OF RECORDS (CIVIL CODE § 5200 ET SEQ., CORPORATIONS CODE § 8334); and**  
(4) **DECLARATORY RELIEF**

Case Filed: October 26, 2022  
Trial Date: Not yet set

25 Plaintiff James Dean (“Plaintiff”) alleges as follows:

26 **PARTIES**

27 1. Plaintiff is the owner of real property located at 425 W Beech St., No. 1705, San Diego,  
28 CA 92101 (the “Property”). The Property is part of a common interest development governed by  
Defendant Acqua Vista Homeowners Association (the “HOA”).

2. The HOA is, and at all relevant times was, a non-profit mutual benefit corporation  
organized and existing under the laws of the state of California, and is an association formed to

1 manage a common interest development under the Davis-Stirling Common Interest Development Act.  
2 (Civ. Code, § 4400 et seq.)

3 3. Plaintiff is unaware of the true names and capacities of the defendants sued as DOES 1  
4 through 20, inclusive, and therefore Plaintiff sues these defendants by fictitious names under Section  
5 474 of the California Code of Civil Procedure. Plaintiff will seek leave of the Court to amend this  
6 Complaint to allege the true names and capacities of DOES 1 through 20, inclusive, when the true  
7 names and capacities are ascertained. Plaintiff alleges on information and belief that each of the  
8 defendants named in this Complaint as DOES 1 through 20, inclusive, is responsible in some manner  
9 for the occurrence, injury, and other damages alleged in this Complaint.

10 4. Plaintiff alleges upon information and belief that, at all relevant times, each named and  
11 unnamed defendant was the agent and/or employee of the other co-defendants, and at all times each  
12 defendant was and is acting within the purpose and scope of such agency and/or employment and with  
13 the permission and consent of his/her/its co-defendants and with knowledge, authorization, permission,  
14 consent, and/or subsequent ratification and approval of each co-defendant. Plaintiff is further informed  
15 and believe that each named and unnamed defendant knowingly and willfully conspired and agreed  
16 among themselves to deprive Plaintiff of its rights and to cause the damages described below.

#### 17 **JURISDICTION AND VENUE**

18 5. Jurisdiction and venue are proper in the Superior Court of California, County of San  
19 Diego, because (i) the events giving rise to the causes of action Plaintiff asserts in this Complaint  
20 occurred in San Diego County; (ii) the real property that forms the basis of this action is located in San  
21 Diego County; and (iii) Plaintiff sustained harm in San Diego County.

#### 22 **BACKGROUND ALLEGATIONS**

23 6. Plaintiff's Property is part of a condominium building governed by the HOA. Plaintiff  
24 has lived in the building since 2005 and has owned his unit since 2010. It is his primary residence.  
25 Plaintiff previously served on the HOA's Board of Directors ("Board") as the Treasurer, and is a  
26 current member of the Board, having been elected to that position by the membership at the HOA's  
27 most recent election, November 2, 2022.

28 7. Plaintiff, by virtue of his ownership of the Property, is a member of the HOA. The HOA

1 and all other members are governed by a set of documents, including a Declaration of Covenants,  
2 Conditions and Restrictions of Acqua Vista (“CC&Rs”), Rules and Regulations (“Rules”), corporate  
3 Bylaws, and Election Rules (collectively, “Governing Documents”). (The text portion of the CC&Rs is  
4 attached to this Complaint as **Exhibit “1”** (maps and drawings attached to the recorded CC&Rs that  
5 are unrelated to this dispute have been omitted), a true and correct copy of the Bylaws is attached to  
6 this Complaint as **Exhibit “2,”** and a true and correct copy of the Election Rules is attached to this  
7 Complaint as **Exhibit “3.”**) The HOA’s Governing Documents are enforceable and binding equitable  
8 servitudes that govern the rights and responsibilities of the HOA vis-à-vis Plaintiff and other members  
9 of the HOA. Consequently, Plaintiff has standing to enforce the Governing Documents against the  
10 HOA pursuant to Civil Code section 5975, and Section 16.2.1 of the CC&Rs.

11 8. The HOA is operated by a Board of Directors (the “Board”). The HOA also currently  
12 employs a property management agent called Seabreeze Management Company (“Property Manager”)  
13 to manage the day-to-day needs of the residents of the development, to collect monthly dues, and to  
14 arrange for maintenance of the common areas as the agent of the HOA.

15 9. The HOA has a duty to enforce the CC&Rs as a matter of law. The HOA also maintains  
16 responsibility for the actions of its agents (i.e., contractors, managers, vendors, and/or individuals  
17 tasked with repair), and must always ensure that such agents perform their job functions with the  
18 requisite standard of care.

19 **The HOA’s Failure to Maintain an Accurate Membership List and the Resulting**  
20 **Effect on Communications Between the HOA and Members.**

21 10. Plaintiff is informed and believes that the HOA and its management company have not  
22 maintained records of member information sufficient to allow the HOA to effectively communicate  
23 with members.

24 11. Plaintiff has confirmed with other owners that not all HOA members receive critical  
25 email messages from the HOA and the management company. The HOA uses an outsourced  
26 information technology provider. Plaintiff contacted that provider to discuss the situation. After  
27 technical conversations with the vendor’s IT engineers Plaintiff learned that the HOA would not  
28 automatically be informed if an email sent by the IT vendor came back as undeliverable.

1           12.     The problem with incomplete membership information extends to the HOA election  
2 process as well. Pursuant to the HOA's Bylaws, elections for the Board of Director positions are to be  
3 held in accordance with the Corporations Code and the HOA's Election Rules adopted pursuant to  
4 Civil Code section 5100 et seq. (Exhibit "2," Bylaws, Art. 4, § 4.1, Art. 5, § 5.5.)

5           13.     Among the requirements of the Civil Code regulating homeowner association elections  
6 are that the elections must be conducted by secret ballot. The ballots and/or proxies must be physical  
7 pieces of paper. Ballots must be sent to each homeowner at least 30 days prior to the election by first  
8 class mail or delivered by the association to each member. (Civ. Code, §5115(b)).

9           14.     Consistent with the requirements of the Civil Code, the HOA's own Election Rules also  
10 contain procedures for conducting Board elections, as well as the timeline for when election related  
11 materials must be distributed to the membership. Section 10.1 of the Election Rules require that the  
12 HOA distribute to the members the secret ballots for the Board election "via first class mail or hand  
13 delivery." (Exhibit "3.")

14           15.     The HOA is required to maintain a voter list containing the name, voting power, and  
15 address of each member. (Civ. Code, § 5105(c)(7).)

16           16.     Plaintiff alleges on information and belief that the HOA's membership roster and voter  
17 list contains outdated, incomplete, and inaccurate information regarding owners' mailing addresses and  
18 email addresses. Plaintiff had previously requested a copy of the HOA's membership roster and/or  
19 voter list in or around October 2021. After receiving a version of a membership roster from the HOA,  
20 Plaintiff sent postal mail to the owners' mailing addresses listed on that membership roster. However,  
21 some of Plaintiff's mailings were returned to Plaintiff due to the addresses being incorrect.

22           17.     Plaintiff thereafter made numerous requests to the HOA for an updated and current  
23 membership roster/voter list, however, the HOA failed to provide Plaintiff with these records, instead  
24 directing him to the outdated membership roster the HOA produced back in or around October 2021.

25           18.     Most recently, on or around July 15, 2022, through his counsel, Plaintiff requested a  
26 current and updated membership roster/voter list from the HOA as he was considering running for a  
27 seat in the upcoming Board election. On or around July 22, 2022, Plaintiff finally received the HOA's  
28 purportedly updated and current membership roster. The membership roster Plaintiff was given did not

1 include the city, state, and zip codes for the owners' mailing addresses. And, like the prior membership  
2 roster that Plaintiff was provided with, Plaintiff is informed and believes that the most recent  
3 membership roster contains outdated, incomplete, and inaccurate information regarding owners'  
4 mailing addresses and email addresses.

5 19. Plaintiff alleges on information and belief that the HOA has not maintained an accurate  
6 membership roster and/or voter list which may preclude the HOA from properly communicating with  
7 the membership, including the distribution of ballots for future elections.

8 **Plaintiff is Elected to the HOA's Board of Directors, but the HOA Denied Plaintiff**  
9 **Access to Corporate Records**

10 20. Plaintiff was elected to a position on the HOA's Board at the election held on  
11 November 2, 2022. As a director, Plaintiff has an absolute right to inspect the HOA's corporate records  
12 at any reasonable time. (Corp. Code, §8334.) Plaintiff has made numerous requests beginning on  
13 November 3, 2022, including a request to the HOA's counsel dated November 4, 2022, to inspect  
14 corporate records. The HOA refused, and continues to refuse, to allow Plaintiff to inspect corporate  
15 records to which he is entitled.

16 **The HOA Impermissibly Denied Plaintiff's Request for Reasonable Parking Accommodations**  
17 **Necessary Because of Plaintiff's Disability**

18 21. The HOA building has a valet parking service that manages the parking area. This  
19 service will park an occupant's car when that occupant drives into the parking garage, and the service  
20 will bring an occupant's car to the waiting area for the occupant when the occupant wants to leave. The  
21 HOA does allow certain occupants to self-park their cars in reserved spaces.

22 22. When Plaintiff moved into the building in 2005, Plaintiff had two parking spaces  
23 assigned to him in the parking garage. These spaces were numbered 148 and 149. Each of these two  
24 spaces was marked as a handicapped space. Plaintiff has a valid disabled parking permit issued by the  
25 state and has had one at all relevant times. Plaintiff was able to use the parking service, who would  
26 park Plaintiff's car in one of his assigned spaces. Plaintiff was also allowed to self-park in those  
27 spaces.

28 23. In 2015, the property management company experimented with having the parking

1 service to try a new system. Plaintiff is informed and believes that the property management company  
2 told the parking service not use the parking spaces on the first floor number in the 100 series during the  
3 day. That included spaces 148-149. Within the first week of this new system, Plaintiff appealed to  
4 management about having his cars return to parking in 148-149 again. Management granted that  
5 request, and the parking service returned to parking his cars in 148-149, thus reaffirming Plaintiff's  
6 right to exclusive use of those two spaces.

7 24. In or around February 2022, the parking service stopped parking Plaintiff's cars spaces  
8 number 148-149. Plaintiff asked why and was told to talk to the property management company, and  
9 that the discontinuation of use of spaces 148-149 was a decision of the HOA's board of directors made  
10 during an executive session meeting to specifically take the parking spaces away from Plaintiff and not  
11 take parking away from others that had assigned spaces and other self-parkers in the building. The  
12 parking service stopped parking Plaintiff's car in the two handicapped spaces that had been assigned to  
13 Plaintiff and advised Plaintiff that the two spaces were no longer assigned to him, per the HOA's  
14 Board. Plaintiff has not been able to self park his vehicle in those spaces since that time.

15 25. Plaintiff has made a request for reasonable accommodation for his disability,  
16 specifically that he be allowed exclusive use of the spaces previously assigned to him. The HOA has  
17 refused, and continues refuse, Plaintiff's request to continue using the handicapped parking spots as a  
18 reasonable accommodation for his disability. Plaintiff is informed and believes that the refusal of the  
19 HOA to allow Plaintiff to continue exclusive use of the disabled parking spaces formerly assigned to  
20 him is the result of retaliation against Plaintiff for challenging the HOA's Board on multiple issues.

#### 21 **The HOA Failed to Repair Common Area Equipment**

22 26. Beginning in approximately October 2021, Plaintiff began hearing significant noise in  
23 his unit which appeared to be coming from above the ceiling in his unit. Plaintiff believes the source of  
24 the noise was from pipes carrying water that are part of the common area HVAC equipment.

25 27. Plaintiff raised the issue multiple times with the HOA, via its property management  
26 company. Plaintiff even accompanied the building's plumbing contractor to inspect and assess the  
27 situation on the roof of the building.

28 28. Despite Plaintiff's efforts and reports to the HOA regarding the problems with the

1 HVAC system, the HOA failed to promptly remedy the situation. In fact, it was not until March 2022  
2 that the problem was finally resolved. During the period that the HVAC was not properly functioning,  
3 Plaintiff had to endure the noise and disruption. The noise level was so bad at times that Plaintiff was  
4 unable to comfortably reside in his unit. Plaintiff had to obtain alternate accommodations, which  
5 caused him to incur approximately \$5,000.00 in expense.

6 29. The HVAC system was not the only common area problem that the HOA failed to  
7 properly address. Also in early 2022, one elevator serving Plaintiff's unit was making unusual sounds.  
8 As a prior director, Plaintiff was familiar with the building's maintenance and its systems. The HOA  
9 insisted that there was nothing wrong with the elevator. After scheduling an inspection with an  
10 appropriate engineer, it became clear to the HOA Board that Plaintiff was correct about the  
11 malfunction in the elevator. The HOA thereafter had the elevator fixed, but not before Plaintiff had to  
12 endure the noise the elevator made as a result of it not working properly.

13 **The HOA Fails to Hold a Special Meeting Requested by Plaintiff and Other Homeowners.**

14 30. In mid October 2021, Plaintiff provided the HOA with a written petition signed by  
15 Plaintiff and other homeowners demanding that the HOA set a special meeting of the membership  
16 pursuant to Section 4.6 of the HOA's bylaws and Corporations Code section 7510(e). The stated  
17 purpose of the special meeting was twofold, first to discuss several management issues, and second, to  
18 vote on a recall of two members of the board of directors.

19 31. The management issues in the petition included Plaintiff's concerns that the other  
20 members of the board of directors had conducted board business under the guise of an "emergency"  
21 and that Plaintiff did not receive notice of such meeting. At this meeting, the board of directors, sans  
22 Plaintiff, expressly reversed its own prior vote, and approved the sale of an assessment lien it has  
23 perfected as against one member's unit. Another issue raised in the petition was the circumstance  
24 surrounding the HOA's call for candidates for director in its annual election set for the fall of 2021.  
25 Plaintiff was not listed as a candidate and Plaintiff contends that the HOA failed to give sufficient  
26 notice to all members, including Plaintiff, to allow members to declare their candidacy for the board of  
27 directors for the upcoming year. Lastly, the petition called for a discussion of the issue concerning the  
28 HOA's refusal to allow write-in votes for that election, which if allowed, may have resulting in

1 Plaintiff being elected to the position of director for 2021-2022.

2 32. In response to the petition, the HOA circulated recall ballots and set a meeting for the  
3 sole purpose of the recall. The HOA failed and refused to address the remaining issues in the petition,  
4 in violation of the HOA's own bylaws and the Corporations Code.

5 **ADR CERTIFICATION**

6 33. By letter on October 13, 2022, Plaintiff requested the HOA to participate in alternative  
7 dispute resolution in an attempt to resolve the disputes relating to the inspection of records and related  
8 matters. However, preliminary or temporary injunctive relief was necessary in this action.  
9 Accordingly, Plaintiff has complied with Civil Code section 5950.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Governing Documents (Civil Code Section 5975) as Against the HOA and DOES 1-20)**

12 34. Plaintiff incorporates the allegations asserted above and re-alleges them as though  
13 repeated in full in this cause of action.

14 35. The Governing Documents govern the rights, responsibilities, and obligations owed by  
15 and to the HOA, and to other members of the HOA, including Plaintiff. The Governing Documents are  
16 enforceable by Plaintiff under Civil Code section 5975, subdivision (b).

17 36. Plaintiff alleges on information and belief that he performed each and every obligation  
18 he was to perform under the Governing Documents, except those obligations Plaintiff was excused or  
19 prevented from performing due to the HOA's wrongful acts and omissions.

20 37. Pursuant to sections 10.5 and 10.6 of the HOA's Election Rules, the HOA must  
21 maintain a voter list of members entitled to vote in HOA elections. (Exhibit "3" hereto. See also, Civ.  
22 Code, § 5105(a)(7).) Further, the HOA is required to allow members to inspect the voter list pursuant  
23 to Election Rules, section 10.7. (Exhibit "3" hereto. See also, Civ. Code, §5105(a)(7).)

24 38. On multiple occasions during 2022, most recently on July 15, 2022, Plaintiff requested  
25 to review the HOA's membership roster in order to communicate with the membership regarding the  
26 then upcoming election. The HOA failed to allow Plaintiff to inspect a complete membership list/voter  
27 list, instead providing him with a list that did not include cities, states, or zip codes of the members.

28 39. On or about November 2, 2022, Plaintiff asked the HOA's inspector of elections to

1 allow him to review the voter list. In complete disregard of Plaintiff's right to inspect that record under  
2 Civil Code section 5105 and the HOA's own Election Rules, the inspector of elections refused to allow  
3 Plaintiff to review the voter list and told Plaintiff he would need a subpoena to review election  
4 materials.

5 40. By refusing to provide Plaintiff with a complete membership list, and by denying  
6 Plaintiff his right to inspect election records, specifically the voter list, the HOA has violated its own  
7 Governing Documents.

8 41. Further, the HOA violated its own bylaws by failing to conduct a special meeting of the  
9 members to discuss the management issues raised by Plaintiff and other homeowners in response to the  
10 petition for special meeting requested in mid October 2021.

11 42. As a consequence of the HOA's breach of its Governing Documents, Plaintiff is entitled  
12 to relief in the form of a judgment compelling the HOA to comply with the Governing Documents and  
13 allow Plaintiff to inspect the voter list and membership roster.

14 43. Plaintiff is also entitled to recover his attorneys' fees and costs in connection with this  
15 action pursuant to Civil Code section 5975.

## 16 SECOND CAUSE OF ACTION

### 17 (Breach of Fiduciary Duty as Against the HOA and DOES 1-20)

18 44. Plaintiff incorporates the allegations asserted above and re-alleges them as though  
19 repeated in full in this cause of action.

20 45. Associations owe a fiduciary duty to their members. (*Raven's Cove Townhomes, Inc. v.*  
21 *Knuppe Development Co.* (1981) 114 Cal.App.3d 783.) The fiduciary duties owed by an association to  
22 its members requires the association to exercise due care and the duty of undivided loyalty. (*Francis T.*  
23 *v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62Cal.App.3d  
24 258, 274.) At all relevant times, the HOA owed fiduciary duties to Plaintiff.

25 46. The HOA breached its fiduciary duties to Plaintiff, and the membership as a whole, by  
26 failing to keep a complete and accurate membership roster to ensure proper delivery of the Board  
27 election materials to all owners.

28 47. The HOA's fiduciary duties, as part of its duty to exercise due care, require it to follow

1 the HOA's Governing Documents, as well as existing law. Corporations Code section 8320 requires  
2 corporations keep "[a]dequate and correct books and records of account" and "[a] record of its  
3 members giving their names and addresses and the class of membership held by each." (Corp. Code, §  
4 8320, subd. (a).) The HOA breached its fiduciary duties by failing to abide by the Corporations Code  
5 and keep an adequate and correct membership roster that includes the names and mailing addresses of  
6 each member of the HOA.

7 48. The HOA further breached its fiduciary duties to Plaintiff by removing Plaintiff's  
8 designated parking spaces without notice to Plaintiff, and by thereafter refusing to grant Plaintiff's  
9 request for a reasonable accommodation for his disability to have at least one of those spaces continue  
10 to be accessible to Plaintiff. As set forth above, Plaintiff has a valid disabled parking permit issued by  
11 the state.

12 49. Even though the HOA removed Plaintiff's designated parking spot, Plaintiff is informed  
13 and believes that the HOA permits other members to have exclusive use of one or more parking  
14 spaces. In addition, the HOA allows the parking service to park the cars of other disabled occupants in  
15 the handicapped spaces. The handicapped spaces are closer to the elevators and can be easily accessed  
16 by disabled members. Otherwise, the members have to travel further to the valet parking area and have  
17 to wait for the parking service to bring their cars to the parking area.

18 50. In addition, Plaintiff is entitled to equitable relief in the form of an injunction to compel  
19 the HOA to comply with applicable law and the Governing Documents by (i) compiling and  
20 maintaining a complete and accurate membership roster that contains all owners' complete mailing  
21 addresses and email addresses to ensure proper delivery of the Board election materials to all owners;  
22 and (ii) granting Plaintiff's request for an exclusive use disabled parking space that he can use to either  
23 self-park his vehicle, or have the parking service park Plaintiff's vehicle in such handicapped parking  
24 space. Unless and until ordered to do so by this Court, Plaintiff alleges upon information and belief  
25 that the HOA's unlawful and wrongful conduct will continue, and Plaintiff will suffer irreparable  
26 injury.

27 51. The fiduciary duty owed to the membership encompasses compliance with existing law.  
28 Pursuant to Civil Code section 4775 the HOA is responsible to repair, maintain, and replace common

1 area components.

2 52. As described above, during the period of October 2021 to March 2022, Plaintiff  
3 experienced significant noise coming from above his unit. The source of the noise was later established  
4 to be malfunctioning common area HVAC equipment. Despite Plaintiff raising the issue multiple times  
5 with the HOA, via its property management company, the HOA failed to promptly remedy the  
6 situation. During this period, Plaintiff was denied the quiet enjoyment of his unit, and had to secure  
7 alternate accommodations at a cost of approximately \$5,000.00.

8 53. As a direct and proximate result of the wrongful actions and inactions of the HOA as set  
9 forth above, Plaintiff has been damaged in a sum to be proven at trial but in no event less than  
10 \$25,000.00.

11 54. Plaintiff is also entitled to recover his attorneys' fees and costs in connection with this  
12 action pursuant to Civil Code section 5975.

### 13 **THIRD CAUSE OF ACTION**

14 **(Failure to Permit Inspection of Records (Civil Code § 5200 et seq., Corp. Code §8334)**

15 **as Against the HOA and DOES 1-20)**

16 55. Plaintiff incorporates the allegations asserted above and re-alleges them as though  
17 repeated in full in this cause of action.

18 56. Pursuant to Civil Code section 5210(b):

19 When a member properly requests access to association records, access to the  
20 requested records shall be granted within the following time periods: (1)  
21 Association records prepared during the current fiscal year, within 10 business  
22 days following the association's receipt of the request. (2) Association records  
23 prepared during the previous two fiscal years, within 30 calendar days following  
24 the association's receipt of the request.

25 57. As a member of the HOA, Plaintiff requested, in writing, to inspect or copy the HOA's  
26 "association records," as that term is defined in Civil Code section 5200, subdivision (a), on July 15,  
27 2022. Specifically, Plaintiff requested a current and updated membership list that includes the name,  
28 property address, mailing address, and email address for all members of the HOA who have not opted  
out under Civil Code section 5220. (See Civ. Code, § 5200, subd. (a)(9).)

58. On July 22, 2022, the HOA produced an incomplete membership list that did not

1 include all owners' full mailing addresses, including the city, state, and zip codes for the owners'  
2 mailing addresses.

3 59. There was no justifiable reason for the HOA to not produce the requested association  
4 records, thus the HOA's withholding of said records was and is unreasonable.

5 60. As a result of the HOA's failure to produce the requested document for inspection,  
6 Plaintiff is entitled to his reasonable attorneys' fees and costs in connection with this action pursuant to  
7 Civil Code section 5235. In addition, the Court should impose a civil penalty of \$500 against the HOA  
8 for the denial of each of Plaintiff's written requests pursuant to Civil Code section 5235.

9 61. Pursuant to Corporations Code section 8334, in a nonprofit mutual benefit corporation  
10 such as the HOA, "[e]very director shall have the absolute right at any reasonable time to inspect and  
11 copy all books, records and documents of every kind and to inspect the physical properties of the  
12 corporation of which such person is a director."

13 62. Plaintiff was elected to be a director of the HOA at its election on November 2, 2022  
14 and is a director as of the date this First Amended Complaint is filed.

15 63. On November 3, November 4, 2022, and on multiple later occasions Plaintiff requested  
16 to inspect the HOA's books and records in connection with his new role as a director of the HOA. A  
17 review of these records is necessary to allow Plaintiff to make informed decisions on HOA business as  
18 a member of the Board. The HOA refused, and continues to refuse, to allow Plaintiff to inspect the  
19 HOA's books and records.

20 64. The HOA's refusal to allow Plaintiff to inspect its books and records under  
21 Corporations Code section 8334 is wrongful and unjustified.

22 65. As a result of the HOA's breach of Corporations Code section 8334, Plaintiff is entitled  
23 to an order or judgment of this Court compelling the HOA to allow Plaintiff to inspect the HOA's  
24 books and records.

#### 25 **FOURTH CAUSE OF ACTION**

#### 26 **(Declaratory Relief as Against the HOA and DOES 1-20)**

27 66. Plaintiff incorporates the allegations asserted above and re-alleges them as though  
28 repeated in full in this cause of action.



1           3.       For a declaration of the rights, duties, and obligations of Plaintiff and the HOA under  
2 the Governing Documents and Civil Code with regard to the HOA's responsibilities to keep and  
3 maintain a complete and accurate membership roster and voter list to ensure proper delivery of future  
4 ballots and election materials to all owners.

5           4.       For a declaration that Plaintiff is entitled to self park his vehicle in an exclusive  
6 designated handicap parking space, and if Plaintiff desires to have the parking service park his car, that  
7 the parking service park Plaintiff's vehicle in that handicapped parking space as an accommodation for  
8 Plaintiff's disability.

9           5.       That the court assess civil penalties against the HOA in the sum of \$500 for each  
10 violation of Plaintiff's inspection rights pursuant to Civil Code section 5235;

11           6.       For attorneys' fees and costs; and

12           7.       For such other relief as the Court deems just and proper.

13  
14 Dated: December 15, 2022

LS CARLSON LAW, PC

15  
16 By: 

KIRK C. PEARSON

RYAN M. DAVIES

SHELBY L. DAWS

Attorneys for Plaintiff, James Dean

**EXHIBIT “1”**

# ACVIS

## **ASSOCIATION GOVERNING DOCUMENTS**

In compliance with amendments to California Civil Code and Government Code, effective January 1, 2000, please attach this cover page to your copy of the association's governing documents.

**If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.**

27309

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ACQUA VISTA

**THIS DECLARATION CONTAINS (I) A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND (II) A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ACQUA VISTA

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ACQUA VISTA ("Declaration") is made this 2<sup>nd</sup> day of June, 2004 by K. HOVNANIAN AT ACQUA VISTA, LLC, a California limited liability company ("Declarant") with reference to the facts set forth in the Article hereof entitled "Recitals."

ARTICLE 1

RECITALS

1.1 PROPERTY OWNED BY DECLARANT. Declarant is the owner in fee simple of that certain real property ("Property") situated in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein.

1.2 NATURE OF PROJECT. Declarant intends to establish a plan of condominium ownership and to establish the Property as a condominium project within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(f), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq., or any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

1.3 DESCRIPTION OF PROJECT. Declarant did not construct the Project, but purchased the completed Project from another developer. Declarant now intends to establish a residential community on the Property in one phase, which will consist of a maximum of 382 Residential Units, and will be established pursuant to the terms of this Declaration and the Condominium Plan. Owners of a Condominium will receive title to a Residential Unit plus an undivided fractional interest as tenant in common to the Common Area. In addition, Owners of a Condominium will receive certain exclusive rights of use and occupancy of a portion of the Common Area and/or Association Property designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan. Each Owner will also receive certain easements for ingress, egress, use and enjoyment over the Common Area and the Association Property subject to the terms of the Governing Documents. Such easements are more particularly described in this Declaration and the deeds conveying the Condominiums to the

Owners. Each Condominium shall have appurtenant to it a membership in the Acqua Vista Homeowners Association, a California nonprofit mutual benefit corporation ("Association"). All capitalized terms used in this Article 1 are defined in Article 2 below.

## DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of Condominium ownership as described in California Civil Code Section 1350 et seq. or any successor statutes or laws for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354, and any successor statutes or laws.

## ARTICLE 2

### DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ADDITIONAL CHARGES. The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 ARCHITECTURAL COMMITTEE. The term "Architectural Committee" means the committee which may be created pursuant to the Article hereof entitled "Architectural Review."

2.3 ARCHITECTURAL GUIDELINES. The term "Architectural Guidelines" means the design criteria adopted by the Board pursuant to the Article hereof entitled "Architectural Review."

2.4 ARTICLES. The term "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.5 ASSOCIATION. The term "Association" means the Acqua Vista Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.6 ASSOCIATION MAINTENANCE MANUAL. The term "Association Maintenance Manual" refers to the manual which may be prepared by Declarant or its consultants and provided to the Association specifying obligations for maintenance of the Association Property and Common Area by the Association, as updated and amended from time to time.

2.7 ASSOCIATION PROPERTY. The term "Association Property" means all real property owned, from time-to-time, in fee title by the Association, which shall consist of all real property within the Project, excepting therefrom the Residential Module. The Association Property shall be held by the Association for the benefit of the Owners.

2.8 ASSOCIATION RULES. The term "Association Rules" means the rules and regulations adopted by the Board from time to time.

2.9 BOARD. The term "Board" means the Board of Directors of the Association.

2.10 BUDGET. The term "Budget" means the budget for the Association which sets forth all the Common Expenses to be allocated among all the Owners.

2.11 BYLAWS. The term "Bylaws" means the Bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.12 CAPITAL IMPROVEMENT ASSESSMENTS. The term "Capital Improvement Assessments" means the assessments which are levied pursuant to the provisions of Section 6.6 of this Declaration.

2.13 CITY. The term "City" means the City of San Diego, California.

2.14 COMMON AREA. The term "Common Area" refers to that portion of the Residential Module which is not designated as a Residential Unit in the Condominium Plan, which is owned in undivided interests by the Owners. 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 Utility Facilities serving two or more Residential Units, wherever located, are a part of Common Area, as shown on the Condominium Plan.

2.15 COMMON EXPENSES. The term "Common Expenses" refers to the actual and estimated costs and expenses incurred or to be incurred by the Association or the Board, including, but not limited to, the following:

2.15.1 maintenance, management, operation, repair and replacement of the Common Area and Association Property and all other areas within the Property which are maintained by the Association;

2.15.2 due but unpaid Assessments (as hereinafter defined);

2.15.3 costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

2.15.4 the costs of any utilities, trash pickup and disposal, elevator, landscaping, and other services benefiting the Owners and their Residential Units to the extent such services are paid for by the Association;

2.15.5 the costs of fire, casualty, liability, worker's compensation and other insurance maintained by the Association hereunder;

2.15.6 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

2.15.7 the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

2.15.8 taxes paid by the Association;

2.15.9 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area, Association Property or portions thereof;

2.15.10 costs incurred by the Architectural Committee, if any, or other committees of the Association; and

2.15.11 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation and/or maintenance of the Common Area, Association Property or in furtherance of the

purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

2.16 CONDOMINIUM. The term "Condominium" means an estate in real property as defined in California Civil Code Section 1351(f) any successor statutes or laws, consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Residential Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium.

2.17 CONDOMINIUM BUILDING. The term "Condominium Building" refers to each building within the Project.

2.18 CONDOMINIUM PLAN. The term "Condominium Plan" means a condominium plan recorded pursuant to California Civil Code Section 1351, and any amendments to the plan.

2.19 COUNTY. The term "County" means the County of San Diego, California.

2.20 DECLARANT. The term "Declarant" means K. Hovnanian at Acqua Vista, LLC, a California limited liability company and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.21 DECLARATION. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Acqua Vista, as this Declaration may from time to time be amended, modified or supplemented.

2.22 DESIGNATED EXCLUSIVE USE COMMON AREA, WALLS OR FLOORS. The term "Designated Exclusive Use Common Area Walls or Floors" refers to those portions of the Common Area consisting of walls and internal equipment located within such walls or floors such as plumbing, ventilating and electrical wires, which are located between two (2) adjacent Residential Units (either horizontally or vertically) over which an Exclusive Use Easement shall be assigned by the Declarant or the Association if an Owner acquires fee title to two (2) or more adjacent Residential Units separated by such wall or floor, subject to compliance with the requirements of this Declaration.

2.23 DRE. The term "DRE" means the California Department of Real Estate.

2.24 ELIGIBLE HOLDER. The term "Eligible Holder" means any First Mortgagee who has given written notice to the Association specifying its name, address, and the number or address of the Condominium covered by the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.25 ENCROACHMENT AREAS. The term "Encroachment Areas" refers to the areas within the public right-of-way located immediately adjacent to the Project and shown and described as the Encroachment Areas on the Condominium Plans.

2.26 ENCROACHMENT AGREEMENTS. The term "Encroachment Agreements" refers collectively to any encroachment agreements with the City recorded against the Project, and any modification, amendments or supplements to such Encroachment Agreements.

2.27 ENFORCEMENT ASSESSMENTS. The term "Enforcement Assessments" means the assessments which are levied pursuant to the provisions of Section 6.7 of this Declaration.

2.28 EXCLUSIVE USE COMMON AREA OR EXCLUSIVE USE EASEMENT. The term "Exclusive Use Common Area" or "Exclusive Use Easement" means those portions of the Common Area and/or Association Property over which exclusive easements are reserved for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), including the Exclusive Use Patio Areas, Exclusive Use Deck Areas and Exclusive Use Courtyard Areas as shown on the Condominium Plan or described in this Declaration to which an exclusive use easement is granted to an Owner and is appurtenant to such Owner's Residential Unit. Except as specifically provided in this Declaration and the Condominium Plan, no other portion of the Common Area or Association Property shall be an Exclusive Use Common Area.

2.29 EXCLUSIVE USE COURTYARD AREAS. The term "Exclusive Use Courtyard Areas" means those portions of the Common Area designated as Exclusive Use Courtyard Areas on the Condominium Plan over which an Exclusive Use Easement has been reserved for the benefit of certain Owners for courtyard purposes and which is appurtenant to such Owner's Residential Unit.

2.30 EXCLUSIVE USE DECK AREAS. The term "Exclusive Use Deck Areas" refers to those portions of the Common Area designated as "Exclusive Use Deck Areas" on the Condominium Plan over which an exclusive easement has been reserved for the benefit of certain Owners for deck purposes and which is appurtenant to such Owner's Residential Unit. Certain Exclusive Use Deck Areas are comprised of an area over which an Owner has an exclusive easement and an area included within the Encroachment Area. The Owners of Condominiums with Exclusive Use Deck Areas which include Encroachment Areas will not have an easement over the portion of the Exclusive Use Deck Areas situated within the Encroachment Area, and will be subject to the rights of the City with respect to such portion. Notwithstanding the foregoing, if the City agrees to grant rights of use over the Encroachment Area, then the Owner shall have such rights of use over such areas.

2.31 EXCLUSIVE USE PATIO AREAS. The term "Exclusive Use Patio Areas" means those portions of the Common Area designated as Exclusive Use Patio Areas on the Condominium Plan over which an Exclusive Use Easement has been reserved for the benefit of certain Owners for patio purposes and which is appurtenant to such Owner's Residential Unit.

2.32 FINAL MAP. The term "Final Map" means the final map covering the Project.

2.33 FIRST MORTGAGE. The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

2.34 FIRST MORTGAGEE. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

2.35 GOVERNING DOCUMENTS. The term "Governing Documents" collectively means this Declaration and the Articles, Bylaws, Architectural Guidelines and the Association Rules and any Supplementary Declaration.

2.36 HAZARDOUS MATERIALS. The term "Hazardous Materials" refers to any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; or (ii) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste," "recyclable material," under any federal, state or local statute or regulation promulgated thereunder.

2.37 IMPROVEMENTS. The term "Improvements" means: (i) all buildings and structures and appurtenances thereto of every type and kind, including, but not limited to, the Condominium Building, swimming pools and other recreational facilities, garages, sidewalks, fences, screening walls, awnings, patio and balcony covers, stairs, decks, balconies, trellises, landscaping irrigation systems, paintings, antennae, poles, signs, solar or wind powered energy systems or equipment and water softener, heater or air conditioning and heating fixtures or equipment; and (ii) any change or alteration of any previously installed improvement.

2.38 INSTITUTIONAL MORTGAGEE. The term "Institutional Mortgagee" means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any federal or state agency; (iv) the State of California as the vendor under an installment land sales contract covering a Condominium; or (v) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Condominium.

2.39 INVITEE. The term "Invitee" means any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.40 LEASE. The term "Lease" means any lease, license or other agreement whereby an occupant acquires rights to use or occupy any portion of the Residential Units.

2.41 LOWER ELEMENT. The term "Lower Element" means the portion of a Residential Unit described in the Condominium Plan as a Lower Element.

2.42 MAINTENANCE OBLIGATIONS. The term "Maintenance Obligations" refers to each Owner's obligations and the Association's obligations to perform (i) all reasonable maintenance consistent with the terms of the Owner Maintenance Manual and the Association Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided by Declarant or any manufacturer; (ii) any commonly accepted maintenance practices to prolong the life of the materials and construction of the Residential Units, Common Area, and Association Property, as applicable; and (iii) maintenance obligations of the Owners and the Association imposed by this Declaration, as applicable, as updated and amended from time to time.

2.43 MAINTENANCE RESPONSIBILITY CHART. The term "Maintenance Responsibility Chart" refers to Exhibit "B" attached hereto and incorporated herein which designates the components of the Project to be maintained by the Association and the Owners, respectively. The Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration.

2.44 MEMBER. The term "Member" means every person or entity who holds a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

2.45 MODULE. The term "Module" means each module designated on the Condominium Plan or in any subsequently recorded Condominium Plan and has been created pursuant to California Government Code Section 66427. Each Module is a three-dimensional portion of the legal lot on which the Property is located as described on the Condominium Plan. The lower and upper boundaries of each Module are set forth in the Condominium Plan(s). The lateral boundaries of each Module are vertical planes which are also described and depicted in the Condominium Plan. The Module includes all land and Improvements (whether now or hereafter located within its boundaries). The modules shown on the Condominium Plan consist of the Modules defined below.

2.45.1 Association Property Module. The term "Association Property Module" refers to the Module designated as the Association Property Module on the Condominium Plan.

2.45.2 Residential Module. The term "Residential Module" refers to the Module designated as the Residential Module on the Condominium Plan.

2.46 MORTGAGE. The term "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Condominium in the Project.

2.47 MORTGAGEE. The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.48 NOTICE AND HEARING. The term "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

2.49 OPERATING RULES. The term "Operating Rules" means regulations adopted by the Board that apply generally to the management and operation of the Project or the conduct of the business and affairs of the Association. Changes to the Operating Rules may not be made except pursuant to Civil Code Section 1357.100, *et seq.*

2.50 OWNER. The term "Owner" refers to an Owner of a Condominium.

2.51 OWNER MAINTENANCE MANUAL. The term "Owner Maintenance Manual" refers to the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Residential Units by the Owners, as updated and amended from time to time.

2.52 PARKING GARAGE. The term "Parking Garage" refers to the underground and above ground parking garage which will be conveyed to and owned by the Association as part of the Association Property.

2.53 PARKING SPACES. The term "Parking Spaces" refers to those areas within the Parking Garage designated for parking purposes, as shown on the Condominium Plan.

2.54 PERSON. The term "Person" means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural Persons.

2.55 PROJECT. The term "Project" means all of the Property together with all Improvements situated thereon, and as the context requires, the Encroachment Areas.

2.56 PROPERTY. The term "Property" means all of the real property described in Exhibit "A" of this Declaration, and so long as the Encroachment Agreements are in place or other agreements granting easements or rights of use over the Encroachment Areas are in place.

2.57 PUBLIC REPORT. The term "Public Report" means the Final Subdivision Public Report issued by the California Department of Real Estate for the Project.

2.58 REGULAR ASSESSMENTS. The term "Regular Assessments" means the assessments that are levied pursuant to the provisions of Section 6.4 of this Declaration.

2.59 RESIDENTIAL UNIT. The term "Residential Unit" means the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Project, such Residential Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The dimensions of a Residential Unit are measured from the unfinished floor, walls and ceiling, except as otherwise noted herein. Certain Residential Units consist of a Lower Element and an Upper Element as shown on the Condominium Plan. The Residential Unit includes all Improvements situated within its boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls), (ii) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (iii) any door or window including any sliding glass doors, (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all Utility Facilities that are located partially within the Residential Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Residential Unit, (vi) all Utility Facilities serving solely that Residential Unit, whether located in the Residential Unit or the Common Area, and (vii) the fire box of any fireplace located in the Residential Unit. The following are not part of any Residential Unit: bearing walls, columns, floors, roofs and foundations, and Utility Facilities that serve two or more Condominiums wherever located. In interpreting deeds and plans, the then existing physical boundaries of the Residential Unit, whether in its original state or reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or Condominium Plan, regardless of minor variances between boundaries shown on the Condominium Plan or deed and regardless of settling or lateral movement of the Condominium Building.

2.60 SPECIAL ASSESSMENTS. The term "Special Assessments" means the assessments that are levied pursuant to the provisions of Section 6.5 of this Declaration.

2.61 STORAGE SPACES. The term "Storage Spaces" refers to the storage spaces located within the Project, as designated on the Condominium Plan.

2.62 SUPPLEMENTAL CONDOMINIUM PLAN. The term "Supplemental Condominium Plan" means (i) any Condominium Plan which supplements a previously recorded Condominium Plan and/or which is subsequently recorded to designate the boundaries of any Exclusive Use Common Areas, Parking Spaces and Storage Spaces, which Supplemental Condominium Plan shall be recorded prior to the conveyance of the first Condominium covered by the Condominium Plan which is being supplemented by the Supplemental Condominium Plan; or (ii) a Condominium Plan or amendment to Condominium Plan which corrects technical errors in the originally recorded Condominium Plan.

2.63 SUPPLEMENTARY DECLARATION. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do any or all of the following: (a) identify areas referenced in this Declaration to be maintained by the Association, and/or (b) make technical or minor corrections to the provisions of this Declaration or previously recorded supplementary declaration(s). A Supplementary Declaration may also be recorded to designate any easements or other rights which may have been granted over the Encroachment Areas.

2.64 UPPER ELEMENT. The term "Upper Element" means the portion of a Residential Unit described in the Condominium Plan as an Upper Element.

2.65 UTILITY FACILITIES. The term "Utility Facilities" means all utility facilities, including intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditions systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Project.

2.66 VOTING POWER. The term "Voting Power" refers to the total voting power of the Association as set forth in Section 5.2.

### ARTICLE 3

#### OWNERSHIP AND EASEMENTS

3.1 OWNERSHIP OF CONDOMINIUM. Title to each Condominium in the Project shall be conveyed in fee to an Owner. Ownership of each Condominium within the Project shall include (a) fee title to a Residential Unit, (b) an undivided interest in the Common Area, (c) a membership in the Association, and (d) any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Common Area and/or Association Property as described in this Declaration, the Condominium Plan, and the deed to the Condominium.

3.2 NO SEPARATE CONVEYANCE. The interest of each Owner in the use and benefit of the Common Area and Association Property shall be appurtenant to the Residential Unit owned by the Owner. No Residential Unit shall be conveyed by the Owner separately from the interest in the Common Area or the right to use the Association Property for the benefit of such Owner. Any conveyance of any Residential Unit shall automatically transfer the interest in the Common Area and the Owner's right to use the Association Property as provided in this Declaration without the necessity of express reference in the instrument of conveyance. Anything in the Article hereof entitled "Amendments," to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project (i) the prior written consent of the Declarant and (ii) the recording of said written consent in the Office of the County Recorder.

3.3 DELEGATION OF USE. Any Owner entitled to the right and easement of use and enjoyment of the Common Area and the Association Property may delegate such Owner's rights provided in this Declaration to use and enjoyment of the Common Area, the Association Property to his or her other tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the Common Area and the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.4 PARTITION. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration.

3.5 EASEMENTS. The ownership interests in the Common Area, Association Property, and to the extent applicable, the Encroachment Areas and Residential Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners, and their Condominiums, the Association and Association Property, the Common Area and the Declarant superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.5.1 Declaration Subject to Easements. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration and the Project shall be subject to all easements shown on the Final Map and to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

3.5.2 Utilities. There are reserved and granted for the benefit of each Residential Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and Association Property and each other Residential Unit), as the servient tenement and for the benefit of the Association Property, as dominant tenement, over, under and across each Residential Unit, as servient tenement, non-exclusive easements for the maintenance, repair and replacement of the Utility Facilities.

3.5.3 Encroachment. There are hereby reserved and granted for the benefit of each Residential Unit, as dominant tenement, over, under and across each other Residential Unit, and Common Area and Association Property, as servient tenements, and for the benefit of the Common Area and Association Property, as dominant tenement, over, under and across each Residential Unit, and Common Area and Association Property as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Residential Units, Association Property and/or Common Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.5.4 Support, Maintenance and Repair. There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and the Association Property and to all other Residential Units, as dominant tenements, through each Residential Unit and the Common Area and Association Property, as servient tenements, for the support, maintenance and repair of the Common Area and Association Property and all Residential Units to the extent necessary.

3.5.5 Association Easement. The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in the Governing Documents. Each Owner will cooperate with the Association to provide access to the Association to perform such duties and powers. The Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Residential Unit resulting from such entry.

3.5.6 Association Right of Entry. The Association and the Association's agents shall have the right to enter upon the Residential Units as set forth in Section 4.3.5 herein.

3.5.7 Easements for Common Area and Association Property. Subject to the provisions of this Declaration, and any Exclusive Use Easements, every Owner shall have, for himself or herself and such Owner's Invitees, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area and the Association Property. Such easements shall be appurtenant to and shall pass with title to such Condominiums, subject to the rights and restrictions set forth below.

(a) Suspend Rights of Members. The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

(b) Dedicate or Grant Easements. The Association shall have the right, without the consent of the Owners, to grant easements over all or any portion of the Common Area and the Association Property.

(c) Control Parking. Subject to the provisions of this Declaration, the Association shall have the right to control parking within the Parking Garage and to promulgate rules and regulations to control parking in a manner consistent with this Declaration, provided however, that the Declarant has reserved (i) easements over all of the Parking Spaces and Storage Spaces, and access thereto, with the right to assign such Parking Spaces and Storage Spaces to Owners, and (ii) the right to institute a valet parking system as set forth in Section 3.8.4 below. Any easements over the Common Area shall be subject to the rights of the Owners regarding the Parking Spaces and Storage Spaces, as set forth herein.

(d) Limit Guests. The Association shall have the right to limit, on a reasonable basis, the number of guests and tenants of the Owners using the recreational and other facilities situated within the Association Property and Common Area. Any such limitation or restrictions shall be set forth in the Association Rules.

(e) Right of Access. Every Owner shall have the right to enjoy free and unobstructed passage between every such Owner's Condominium, through the Common Area and Association Property to all publicly dedicated streets bordering the Project, subject to any restrictions imposed by any city, county or state.

3.5.8 Easement To Declarant. Declarant shall have and hereby expressly reserves the easements necessary for Declarant and its agents, employees and independent contractors to exercise Declarant's rights set forth in Article 10 of this Declaration. Such rights shall include the right to reserve easements over the Common Area of Project for construction purposes and the right to limit access, ingress and egress to the Common Area of the Project during such construction and the right to reserve such easements as may be required for the marketing, sale or leasing of the Condominiums.

3.6 LIGHT, AIR AND VIEW. No Owner shall have an easement for light, air or view over the Residential Unit of another Owner and no diminution of light, air or view by any

Condominium Building or Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Project; provided, however, that the following provision shall not relieve any Owner from obtaining the approvals required pursuant to Article 7 hereof with respect to any modification to such Owner's Improvements.

**3.7 CREATION OF DESIGNATED EXCLUSIVE USE COMMON AREA WALLS OR FLOORS.** The Declarant and, subject to the provisions of Article 9 of this Declaration, the Association shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Condominiums, without amending this Declaration or the Condominium Plan, an Exclusive Use Easement on and through any demising wall(s) or floors separating two (2) or more Residential Units and the right to alter, modify or remove such demising walls or floors subject to the consent of the Declarant and conformance with the requirements of the Board, pursuant to the provisions of Article 9. If an Owner receives the required approvals hereunder and combines two (2) or more adjacent Residential Units, such Residential Units shall be treated as separate Residential Units for all purposes hereunder, including separate assessments for each individual Residential Unit.

### 3.8 PARKING.

3.8.1 Parking Rights. Declarant shall, so long as Declarant owns any portion of the Property, have the sole right to assign to Owners an exclusive right to use a Parking Space or Parking Spaces in the Parking Garage ("Assigned Parking Spaces"). Declarant shall, upon assigning a Parking Space to an Owner of a Residential Unit designate such assignment in the records of the Association. Upon assignment of an Assigned Parking Space to an Owner of a Residential Unit, such Owner shall have the exclusive right to the use of the Parking Space so assigned, subject to the rights of the Declarant and the Association set forth below. Upon such assignment by Declarant, the Association shall not have the right to change the location of such Assigned Parking Space, except as provided below. Upon conveyance of a Condominium by an Owner to another Owner, the parking rights assigned to such Owner in the records of the Association shall automatically inure to the benefit of the new Owner. Upon conveyance of the last Condominium to an Owner by Declarant, the Declarant shall assign to the Association any Parking Spaces not previously assigned by Declarant for use by the Association for Owner parking.

3.8.2 Temporary Relocation Rights. The rights assigned to the Owner of a Residential Unit to use or occupy an Assigned Parking Space shall be subject to the rights of the Declarant or the Association to temporarily relocate such Parking Space, upon reasonable notice, in order to accommodate any maintenance or repairs of Improvements located within the Project. In such case, Declarant or the Association shall have the right to exchange the affected Parking Space for another available Parking Space, if any. Each Owner hereby acknowledges that such activities of the Declarant or the Association may impair the use of such Owner's Assigned Parking Spaces and may constitute an inconvenience or nuisance to the Owners and each Owner hereby consents to such impairment, inconvenience or nuisance, and hereby releases the Declarant and the Association from any claims with respect to such matters

3.8.3 Relocation Based Upon Agreement of Owners. If an Owner desires to exchange his or her Assigned Parking Space with another Owner, or to sell its Assigned Parking Space to another Owner, and both affected Owners voluntarily agree to the exchange or sale, and provided the two Owners sign an agreement in a form prepared by the Association agreeing to the exchange or sale, the Association may then change its records to reflect the exchange requested by the two Owners, or the sale of the Assigned Parking Space, as applicable. The Association shall retain in its records the written agreement of the two Owners. Upon the change to the records of the Association, then the new Assigned Parking Spaces shall inure to the benefit of the future Owners of such Residential Unit.

3.8.4 Valet Parking. Declarant reserves the right to institute a valet parking system for the Parking Garage in its sole and absolute discretion. If Declarant elects to institute a valet parking system, all Owners' rights to their Assigned Parking Spaces shall be automatically

suspended as of the close of escrow on their Condominiums, and such suspension shall continue until such time, if any, that the Association elects to terminate the valet parking system. If Declarant elects to institute a valet parking system, the Association will then contract with a valet service provider and the valet service provider will have the right to park the Owners' vehicles in any parking space in the Parking Garage, regardless of the location of an Owner's Assigned Parking Space. The Association may elect at any time, upon approval of (i) seven-eighths (7/8ths) of all Owners whose Assigned Parking Spaces are Shared Tandem Spaces, and (ii) a majority of all other Owners, to discontinue the valet parking system, and in such case, the Owners' rights to use their Assigned Parking Spaces as set forth above shall automatically be reinstated. As used herein, the term "Shared Tandem Spaces" refers to two tandem Parking Spaces that are assigned to the Owners of two different Condominiums.

3.9 STORAGE RIGHTS. Declarant shall, so long as Declarant owns any portion of the Property have the sole right to assign to Owners an exclusive license and right to a Storage Space ("Assigned Storage Spaces"). Declarant shall, upon assigning a Storage Space to an Owner of a Residential Unit designate such assignment in the records of the Association. Upon such assignment, such Owner shall have the exclusive right to the use of the Assigned Storage Spaces, subject to the rights of the Declarant and Association set forth herein. Upon such assignment by Declarant, the Association shall not have the right to change the location of such Assigned Storage Space except as provided below. Upon conveyance of a Condominium by an Owner to another Owner, the storage rights assigned to such Owner in the records of the Association shall automatically inure to the benefit of the new Owner. Upon conveyance of the last Condominium to an Owner by Declarant, the Declarant shall assign to the Association any Storage Spaces not previously assigned by Declarant for use by the Association for guest or Owner storage.

3.9.1 Temporary Relocation Rights. The right of an Owner to use or occupy an Assigned Storage Space shall be subject to the rights of the Declarant and the Association to relocate such Storage Space as described below. Declarant, or the Association, upon reasonable notice, shall have the right to temporarily relocate an Assigned Storage Space in order to accommodate any maintenance or repairs of Improvements located within this the Project. In such case, Declarant shall have the right to exchange the affected Storage Space for another available Storage Space. Each Owner acknowledges that such activities of the Declarant and/or the Association may impair the use of such Owner's Assigned Storage Spaces and may constitute an inconvenience or nuisance to the Owners and hereby consents to such impairment, inconvenience or nuisance, and hereby releases the Declarant and the Association from any claims with respect to such matters

3.9.2 Relocation Based Upon Agreement of Owners. If an Owner desires to exchange his or her Assigned Storage Space with another Owner, or to sell its Assigned Storage Space to another Owner, and both affected Owners voluntarily agree to the exchange or sale, and provided the two Owners sign an agreement in a form prepared by the Association agreeing to the exchange or sale, then the Association may change its records to reflect the exchange

requested by the two Owners, or the sale of the Assigned Storage Space, as applicable. The Association shall retain in its records the written agreement of the two Owners. Upon the change of the records of the Association, then the new Assigned Storage Spaces shall inure to the benefit of the future Owners of such Residential Unit.

3.10 CHARGE FEES. To the extent the Declarant assigns to the Association any Parking Spaces and/or Storage Spaces which are in excess of the Parking Spaces and/or Storage Spaces assigned by Declarant to Owners, the Association shall have the right to charge reasonable fees for the use of any such Parking Spaces and Storage Spaces so assigned by Declarant to the Association. The Association shall also have the right to charge a fee for guest parking and for the parking of any vehicles by an Owner in excess of the rights assigned under Section 3.8.

#### ARTICLE 4

#### THE ASSOCIATION

4.1 THE ORGANIZATION. The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Condominium to an Owner under a Public Report, the Association shall be charged with the duties and invested with the powers set forth in this Declaration and the other Governing Documents.

4.2 ASSOCIATION ACTION; BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL. Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total Voting Power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

4.3 POWERS OF THE ASSOCIATION. The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described in Section 4.6 below.

4.3.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration.

4.3.2 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Association in its own name and on its own behalf, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, and shall be provided with at least fifteen (15) days written notice of such hearing, or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, the Board shall provide written notice of any sanctions to be imposed and the reasons for such sanctions, not more than fifteen (15) days following the Board action. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers, Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent, subject to the requirements of the Section 4.6.1.

4.3.4 Association Rules. The Board shall have the power to adopt, amend and repeal the rules and regulations set forth in the Association Rules as it deems reasonable. The Board may, in its discretion, promulgate rules applicable to the Owners. The Association Rules shall govern the use of the Common Area and the Association Property by all Owners and their Invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the rules and regulations set forth in the Association Rules and any other provisions of this Declaration, the Articles, or Bylaws, the conflicting rules and regulations set forth in the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles and the Bylaws.

4.3.5 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Board or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter into a Residential Unit for the purpose of construction, maintenance or emergency repair for the benefit of the Common Area, Association Property, Encroachment Areas or the other Condominiums or to perform its obligations under the Declaration or to cure any default by an Owner under this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. If any such repair or maintenance is due to the failure of an Owner to perform its obligations hereunder, the cost of such maintenance or repair shall be assessed against said Owner as an Enforcement Assessment in accordance with the provisions of the Article hereof entitled "Assessments".

4.3.6 Easements and Rights of Way. The Association, acting by and through the Board, and without the vote of the Owners, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Common Area and Association Property, except that such easements may be granted over the Exclusive Use Common Areas only so long as they do not unreasonably interfere with the use of such areas by the Owner thereof.

4.3.7 Capital Improvements. Subject to the terms of this Declaration, the Board may, on its own motion or acting on a petition signed by two-thirds (2/3rds) of the Owners, approve the construction, installation or acquisition of a particular capital improvement to the Common Area and/or the Association Property.

4.3.8 Other Property. The Association, acting by and through the Board, may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in Section 4.5.2.

4.3.9 Enter Into Agreements with Declarant. The Association shall have the power to enter into agreements with Declarant, as approved by the DRE, (i) for the repair and maintenance of the Association Property, (ii) for the undertaking by Declarant of any other maintenance responsibilities of the Association pursuant to the provisions of this Declaration, and (iii) regarding the payment of assessments.

4.3.10 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, release, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration, and (b) any and all claims, causes of action, damages and suits for defects relating in any way to design or construction of the Association Property or the Common Area or any portion thereof on behalf of all Owners; provided, however, that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., such that from and after

the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in Association Property or Common Area pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Each Owner hereby agrees to designate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of such claims. Any recovery by the Association with respect to any damage to or defect in the Association Property or 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.

4.3.11 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Common Area and/or the Project necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in Section 4.5 below.

4.3.12 Architectural Committee. Subject to the provisions of Article 9, the Association shall have the right to form an Architectural Committee and to appoint and remove Members of the Architectural Committee.

4.3.13 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Common Area and Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens collected thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of sixty-seven percent (67%) of each class of Members.

4.3.14 Rights Under Encroachment Agreements. Each Owner acknowledges that the City of San Diego has certain rights which it may exercise under the Encroachment Agreements and with respect to the Encroachment Areas (including, without limitation, the right to require the removal of the portions of Exclusive Use Deck Areas within the Encroachment Areas). Each Owner, by acceptance of a deed, hereby delegates to the Association any rights and authority regarding the Encroachment Areas and the Encroachment Agreements. Each Owner, by accepting a deed to a Condominium, shall be deemed to have irrevocably appointed the Association as his or her Attorney-in-Fact, for himself or herself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessee, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of

Attorney coupled with an interest to the Association, as his or her Attorney-in-Fact to prepare, execute, acknowledge and record any encroachment agreements with the City regarding the Encroachment Areas, and any amendments thereto regardless of whether the Association owns any interest in the property which is the subject of such encroachment agreement or amendment. However, nothing set forth herein shall be deemed or construed as an agreement by the Association that any Owner shall be entitled to any participation in or discretion over the preparation and recordation of such encroachment agreement or amendment thereto. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

4.3.15 Rights Regarding Title Policies. If any title claims regarding the Association Property, Common Area or Encroachment Areas, are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

4.3.16 Employ Consultants. The Association shall have the power to contract with persons necessary for the effective operation and maintenance of the Association including legal, management and accounting services.

4.3.17 Private Utility Systems. The Association shall have the power and duty to maintain any private sewer systems, private water systems, private storm drains, or private drainage facilities within the Association Property in accordance with the Declaration.

4.4 DUTIES OF THE ASSOCIATION. In addition to the powers delegated to it by its Articles and the Bylaws, and without limiting their generality, the Association, acting by and through the Board, has the obligation to perform each of the duties set forth below.

4.4.1 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association Property, personal property owned by the Association or against the Association, if any. Such taxes and assessments may be contested or compromised by the Association; if they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.4.2 Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, electrical, telephone, gas and other necessary utility services for the Association Property and the Common Area.

4.4.3 Utilities Suppliers. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the

Common Area and/or the Association Property and/or the Encroachment Areas reasonably necessary to the ongoing development and operation of the Project.

4.4.4 Maintenance of Project. The Association shall have the duty to landscape, maintain and repair the Common Area and Association Property to the extent applicable, the Encroachment Areas and any other portions of the Project required to be maintained by the Association pursuant to the provisions of the Governing Documents and the Association Maintenance Manual.

4.4.5 Insurance. The Association shall obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled "Insurance."

4.4.6 Notice Prior to Litigation. The Board shall notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of Sections 16.3 and 16.4 of this Declaration.

4.4.7 Member's Approval of Certain Actions. In the event that any claim or other actions brought by the Association under California Civil Code Section 895 et seq., and any successor statutes or laws or any other applicable laws, involving allegations of construction defects relating to the Association Property or the Common Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate a further action or procedure against Declarant under Section 16.4 or otherwise without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et seq. and 7613 and any successor statutes or laws.

4.4.8 Refuse and Rubbish Collection. The Association shall provide refuse and rubbish collection for the Owners, which cost shall be included as a Common Expense.

4.4.9 Financial Matters. The Association shall have the duty to prepare annual budgets, reports, balance sheets and operating statements for the Association as required under this Declaration and the Bylaws.

4.4.10 Reserves. The Association shall establish and maintain a reserve fund as required under the Governing Documents.

4.4.11 Use of Proceeds to Repair. In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements

established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

4.4.12 Encroachment Claims. The Association shall have the duty to respond to claims against the Association or any Owner in connection with the Encroachment Areas and the Encroachment Agreements. In the event any costs arise in connection with the Encroachment Areas or the Encroachment Agreements due to encroachment, the Association shall have the duty to pay such costs and may levy Special Assessments to defray such costs pursuant to the provisions of Section 6.5.

4.4.13 Shoring Agreement. The Association shall assume all obligations and responsibilities of the Declarant under that certain "Notice of Geotechnical Conditions" between the Declarant and the City of San Diego, recorded in the Official Records of the San Diego County Recorder's Office on October 8, 2001 as Document No. 2001-0725157, relating to the soil nails in the public right-of-way, including, but not limited to, all indemnity obligations, arising after the transfer of the Association Property to the Association.

4.4.14 Owner Maintenance Manual. The Association shall maintain at the offices of the Association a copy of the Owner Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request for a copy, a copy of the Owner Maintenance Manual for the Owners' Residential Units. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall also comply with provisions of the Owner Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

4.5 LIMITATIONS ON AUTHORITY OF BOARD. The Board shall not take any of the actions listed below except with the vote or approval by written ballot of (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in Section 5.2 of this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 and any successor statutes or laws of at least more than fifty percent (50%) of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

4.5.1 Limit on Capital Improvements. The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Common Area or the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

4.5.2 Limit on Sales of Association Property. The Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of

the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

4.5.3 Limit on Compensation. The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association.

4.5.4 Limit on Third Person Contracts. The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area, the Association Property, the Encroachment Areas or the Association for a term longer than one year with the following exceptions:

- (a) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
- (b) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured;
- (c) An agreement for cable television services and equipment or satellite television services or equipment of not to exceed (5) five years duration;
- (d) An agreement for sale or lease of any security, fire, or other similar equipment, installation and services or telecommunications, data processing, fiber optics, cable or other similar services or technological evolutions of the foregoing, of not to exceed five (5) years duration but which may provide for renewals for an additional five (5) years so long as a majority of the Owners do not object;
- (e) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party;
- (f) A contract approved by the DRE; and
- (g) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association.

4.6 PROHIBITED ACTIVITIES. Notwithstanding any other provisions of this Declaration or the other Governing Documents, the Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Association funds or resources therefor, and the following activities shall not be permitted functions of the Association.

4.6.1 Property Manager. The Association shall not hire a professional manager as an employee. The Manager for the Association shall at all times be a professional manager employed as an independent contractor officed at its own place of business, except for a limited presence at the Project as may be approved by the Board. Nothing contained herein shall limit the Association from hiring other employees for the Property.

4.7 CONTRACTS. Any agreement for professional management of the Project or any agreement providing for services of the Declarant shall be for a term not to exceed one (1) year without the consent of more than fifty percent (50%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

4.8 PERSONAL LIABILITY. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees, if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7 and any successor statutes or laws, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7 and successor statutes or laws shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, or any successor statute or law, have been satisfied.

4.9 OPERATING RULES. Notwithstanding any provision of this Declaration to the contrary, Operating Rules may not be adopted, changed or amended except by and pursuant to the procedures set forth in Civil Code Section 1357.100 *et seq.*

## ARTICLE 5

## MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

5.1 MEMBERSHIP.

5.1.1 Qualifications. Each Owner of a Condominium which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in the Condominium in the Project ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. Notwithstanding the foregoing, Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Project. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of San Diego County of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class C membership rights.

5.1.4 Commencement of Voting Rights. An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

5.2 NUMBER OF VOTES. The Association shall have three (3) classes of voting membership:

5.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in Section 5.2.2 below), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium,

all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

5.2.2 Class B Members. Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the date the total outstanding votes held by Class A Members is equal to the total outstanding votes held by Class B Members; or

(b) The fifth (5<sup>th</sup>) anniversary of the first close of escrow of a Condominium covered by the original Public Report for the Project; provided, however, if as of such fifth (5<sup>th</sup>) anniversary ninety percent (90%) of the Condominiums are not sold, then the conversion date shall be extended to the seventh (7<sup>th</sup>) anniversary of the issuance of the Public Report.

As long as the Class B Membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in Section 4.4.7 of this Declaration. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

5.2.3 Class C Member. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the voting power of the Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be solely entitled to elect a majority of the members of the Board until the fifth (5<sup>th</sup>) anniversary following the most recent close of escrow of a Condominium covered by the original Public Report for the Project; provided however, Declarant shall have the right to terminate the Class C membership at any time by delivering written notice to the Association. During this time, Declarant shall be entitled to replace any Member of the Board initially elected by Declarant using its Class C membership upon the death, resignation or removal of any such Board member.

5.2.4 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium 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 exercises the voting rights of a particular Condominium, 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 Condominium. If more than one (1) person or entity

exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

## ARTICLE 6

### ASSESSMENTS

**6.1 CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

6.2 FUNDS HELD IN TRUST. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. The Board shall budget and keep at least the following accounts ("Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made in the Association's performance of its functions:

6.2.1 General Operating Fund. A General Operating Fund for current expenses of the Association.

6.2.2 General Reserve Fund. An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Property which the Association is obligated to maintain.

6.2.3 Miscellaneous Maintenance Funds. Any other Maintenance Funds which the Association may deem necessary.

6.3 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, but not limited to, the improvement and maintenance of the Common Area and Association Property and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.4 REGULAR ASSESSMENTS.

6.4.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year, which budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

6.4.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a budget as described in the Article of the Bylaws entitled "Budget and Financial Statements," not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year or as otherwise required.

6.4.3 Restrictions for Tax Exemption. As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

6.4.4 Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.5 SPECIAL ASSESSMENTS. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, costs in connection with the Encroachment Areas or the Encroachment Agreement due to encroachment whether attributable to the Association or any Owner, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area and the Association Property, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in Section 9.3 of the Bylaws. Except for Special Assessments levied pursuant to Section 9.3 of the Bylaws, any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in Section 6.8 below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.6 CAPITAL IMPROVEMENT ASSESSMENT. In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of Section 4.3.7. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in Section 6.8 below.

6.7 ENFORCEMENT ASSESSMENTS. The Association may levy an Enforcement Assessment against any Owner who causes damage to the Common Area and/or the Association Property or for bringing an Owner or his or her Condominium into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest 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 Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and that satisfies California Corporations Code Section 7341 and any successor statutes or laws, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in Section 6.15 of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c or any successor statutes or laws. 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.

6.7.1 Reconstruction Assessments. Reconstruction Assessments may be levied by the Community Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

6.8 LIMITATION ON ASSESSMENTS. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding fiscal year and Special Assessments and Capital Improvement Assessments shall not be imposed which in the aggregate exceed five

percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the consent of a majority of the Owners, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq and 7613 and any successor statutes or laws. The Board may not increase the Regular Assessments for any fiscal year unless it has complied with California Civil Code Section 1365.5(a) and any successor statutes or laws. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Association and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Project which is the responsibility of the Association to maintain where a threat to personal safety on the Project is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Project which the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is 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 Regular Assessment. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

6.8.2 Special Assessments Upon Exercise of Encroachment Removal Rights. If the City exercises its rights to require removal of all or a portion of the improvements within the Encroachment Areas, if any, the Association may levy a Special Assessment to fund the cost of the removal of the encroachment and, notwithstanding the limitations set forth above, each Owner agrees, to the extent permitted by law, that it will not protest or contest the levy of such Special Assessment.

6.8.3 Notice to Owners. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

6.9 RATE OF ASSESSMENT. Except as otherwise provided for herein, that portion of Regular, Special and Capital Improvements Assessments set forth in the Budget as "variable

expenses" shall be allocated by the Board as provided Exhibit "C" attached hereto. All other items covered by any Regular, Special and Capital Improvement Assessments set forth in the Budget shall be fixed at a uniform rate for all Units. Enforcement Assessments and Reimbursement Assessments shall be levied directly to the individual Units.

**6.10 DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES.** The Regular Assessments provided for herein shall commence as to all Condominiums subject to this Declaration on the first day of the month following the conveyance of the first Condominium to an Owner under authority of a Public Report.

**6.11 NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.** A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including attorneys' fees, which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366, and any successor statutes or laws.

**6.12 ESTOPPEL CERTIFICATE.** The Board on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

**6.13 COLLECTION OF ASSESSMENTS, LIENS.**

**6.13.1 Right to Enforce.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 6.14.2 enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in Section 6.14 shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to the Association Property and

facilities for which the Member or the Member's invitees were responsible, which may become a lien on the Owner's Condominium, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or in bringing the Member and his or her Condominium into compliance with the Governing Documents of the Association may not be characterized nor treated as an assessment that may become a lien against the Member's Condominium enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.13.2 Notice of Assessments and Foreclosure. The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

6.13.3 Delinquent Assessments. The Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Condominium (as set forth in Section 6.13.4), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("Initial Notice"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Explanation"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Association shall provide the Owners the standards for payment plans if any exists.

6.13.4 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Condominium, any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws interest at the rate permitted in such Section, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367.1 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 and any successor statutes or laws.

6.13.5 Assignment. The Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

6.13.6 Notice of Default; Foreclosure. The Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

6.13.7 Payments Under Protest. Notwithstanding any other provisions set forth in this Section 6.15, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354, 1366.3, 1367.1 and any successor statutes or laws, as provided in Section 16.2 hereof.

6.13.8 Payment of Assessments. Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been

paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

6.14 ADDITIONAL CHARGES. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent subject to California Civil Code Section 1362(j). Additional Charges shall include, but not be limited to, the following:

6.14.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

6.14.2 Late Charges. A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

6.14.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;

6.14.4 Interest. Interest to the extent permitted by law; and

6.14.5 Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.15 WAIVER OF EXEMPTIONS. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

6.16 SUBORDINATION OF LIEN TO FIRST MORTGAGES. When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Condominium subject to assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of 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 any assessments thereafter becoming due or from the lien of any

subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Condominiums.

6.17 NO OFFSETS. All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.18 PERSONAL LIABILITY OF OWNER. No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Common Area Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

6.19 TRANSFER OF PROPERTY. After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership if written notice of such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer.

6.20 FAILURE TO FIX ASSESSMENTS. The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

6.21 PROPERTY EXEMPT FROM ASSESSMENTS. The Association Property shall be exempt from the assessments, charges and liens created herein. Although no land or improvements devoted to dwelling use in the Project shall be exempt from Assessments by the Association, Declarant and the Owners shall be exempt from paying any portion of Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence of any Improvements on the Association Property or Common Area which are not complete at the time assessments commence, which exemption shall be in effect only until the earlier to occur of the following: (i) a notice of completion for the subject Association Property or Common Area has been recorded, or (ii) the subject Association Property or Common Area has been placed into use.

6.22 INITIAL CAPITAL CONTRIBUTIONS. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to two (2) times the amount of the monthly Regular Assessment. This amount shall be deposited by the Owner into the purchase and sale escrow for his or her Condominium and disbursed therefrom to the Association.

## ARTICLE 7

### USE RESTRICTIONS

7.1 RESIDENTIAL USE. The Residential Units shall be used for residential purposes only; provided, however, any Residential Unit may be used incidentally for the purpose of operating a home based small business if, and only if, (a) the business is operated solely within the Residential Unit, (b) the business is limited to arts and crafts, the rendition of professional services or other similar activities, (c) the business is operated by the Owner or tenant of the Residential Unit (or a member of such Owner's or tenant's family) whose principal residence is the Residential Unit, (d) the operation of the business is permitted by, and is at all times in compliance with, all applicable laws, and (e) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any odor, noise, or vibration outside of the Residential Unit, or (iv) parking problems within the Project. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant may use any of the Residential Units owned by Declarant as model homes and sales offices for the Project during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof.

7.2 COMMERCIAL USE. Except as otherwise provided in this Declaration, including without limitation Section 7.1 above, no Residential Unit shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

7.3 SIGNS AND DISPLAYS. No sign, advertising device or other display of any kind shall be displayed in the Project, except for the following:

7.3.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

7.3.2 for each Condominium, one (1) nameplate or similar Owner name or address identification which complies with the Architectural Guidelines;

7.3.3 for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713:

(a) the sign is not larger than twelve inches (12") by eighteen inches (18") in size; and

(b) the sign is in compliance with the Architectural Guidelines or is otherwise authorized by the Board;

7.3.4 noncommercial signs permitted by Civil Code Section 1353.6; and

7.3.5 such other signs or displays authorized by the Board.

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in Article 10.

7.4 WINDOW COVERINGS. If any Owner desires to install window coverings that are visible from outside a Residential Unit, such window coverings shall be of a neutral shade and shall be subject to the Architectural Guidelines. Window tinting shall also be subject to the Architectural Guidelines.

7.5 ANIMALS. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept, maintained, or bred in any Residential Unit or elsewhere within the Project, except for fish in an aquarium and birds in cages maintained in the interior of a Residential Unit and not more than a total of two (2) domestic dogs (other than dogs which in the reasonable determination of the Board are determined to be a threat to the safety of the occupants of the Project, which shall not be allowed under any circumstances in the Project) or two (2) domestic cats, or a combination thereof, so long as such animals are kept as household pets and are not kept, bred or raised for commercial purposes. Notwithstanding the foregoing, the Board may adopt Association Rules which further limit or restrict the keeping of such pets, including, without limitation, restricting pets from being left unattended on Exclusive Use Patio Areas, Exclusive Use Deck Areas and Exclusive Use Courtyard Areas. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to, or a threat to the personal safety of, any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet within the Project shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or by members of his or her family, his or her guests or Invitees and it shall be the duty and responsibility of each such Owner to clean up after such animals which have deposited droppings or otherwise used any portion of the Project or public street abutting or visible from the Property. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal.

7.6 USE OF EXCLUSIVE USE COMMON AREAS. Improvements including, without limitation, potted plants, other landscaping features and furniture within the Exclusive Use Patio Areas, Exclusive Use Deck Areas and/or Exclusive Use Courtyard Areas shall be subject to the Association Rules and the Architectural Guidelines and any Improvements within such areas shall require the approval of the Board, except as originally installed by Declarant. Any furnishings within such areas shall be equipped with protective leg caps or other devices to prevent damage to the floor of such areas. No Improvement shall be nailed, bolted, or otherwise attached to the floor, walls, or any other portion of such areas. No hanging screens, banners, or wind chimes and no other accouterment (other than plants) which may be visible from any other Residential Units or the Common Area are permitted on any portion of such areas. Unless installed by Declarant, all plants kept in the Exclusive Use Deck Areas, Exclusive Use Courtyard Areas, or Exclusive Use Patio Areas shall be kept in pots or planters which do not allow water to drain outside of such pot or planter and must not be allowed to collect condensates or moisture between the receptacles and the floor, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of such areas, except as approved by the Board. No Owner shall change or alter the surface of any such areas without the consent of the Board. All such areas shall be kept in clean and orderly condition by the Owners thereof. No Owner shall use any Exclusive Use Deck Area, Exclusive Use Patio Area and/or Exclusive Use Courtyard Areas for storage purposes, including, without limitation, the storage of bicycles. Each Owner

acknowledges that, notwithstanding anything to the contrary set forth in this Declaration, the Association shall have the right to enter onto such Exclusive Use Common Areas to perform its maintenance and other obligations under this Declaration.

7.7 WATER BEDS AND LIMITATIONS ON SIZE OF AQUARIUMS. No water beds shall be permitted in any Residential Unit and no Owner can maintain in his or her Residential Unit any aquarium or other container holding thirty (30) or more gallons of water unless the approval of the Board has been obtained. Each Owner acknowledges that substantial damage to other Residential Units, Association Property and/or Common Area may occur as a result of a violation of this restriction.

7.8 INSIDE AND OUTSIDE INSTALLATIONS. No addition, change or alteration to the exterior of any Residential Unit or any other portion of a Condominium or any other Improvements, other than as may be constructed by Declarant as part of the initial construction of the Project, shall be commenced without the prior written approvals required under Article 9 of this Declaration. No structures, equipment or any alterations shall be installed or placed on the exterior of the Condominiums or within any other portion of the Residential Unit or be allowed to penetrate or protrude into or through the unfinished surfaces of the ceilings, walls, floors or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approvals required under Article 9 of this Declaration have been obtained. Nothing shall be done in or to any Condominium which will or may tend to impair the structural integrity of the Condominium Building, any other attached Residential Unit, or other improvement in the Property or which would structurally alter the Condominium Building except as otherwise expressly provided herein. In addition to the foregoing, all Improvements installed or constructed by an Owner within the Project must be completed in accordance with applicable laws, including, but not limited to, the laws, regulations and ordinances of the City.

7.9 NO MECHANICS' LIENS. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

7.10 DECORATING BY OWNER. Each Owner shall have the right, at his or her sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Residential Unit, and the surfaces of the bearing walls and partitions located within the Residential Unit, subject to the Owner complying with any restrictions or limitations set forth in the Architectural Guidelines and, if such work will result in a penetration of the unfinished surfaces of the ceilings, walls or floors, obtaining the consent of the Board.

7.11 HARD SURFACE FLOORS. Except for those hard surface floors installed by Declarant as part of the original construction of the Project, no Owner shall install any hard surface flooring (including, without limitation, tile or hardwood floors) or replace any flooring with any hard surface flooring, unless they obtain the prior approval of the Board pursuant to Article 9. Board approval shall be based solely on whether the type of flooring to be installed complies with the Architectural Guidelines. As a condition to approving the installation or replacement of hard surface flooring, the Owner shall submit to the Board a construction drawing clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate against impact noises such as footfalls. The drawing must clearly identify all materials, their composition and thickness.

7.11.1 Sound Attenuation. In any multi-family dwelling, sound may be audible between Residential Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Residential Unit is very low. Each Owner shall endeavor to minimize any noise transmission from his or her Unit, and shall adhere to any of the rules and regulations set forth in the Association Rules which are designed to minimize noise transmission. To minimize the noise transmission from a Residential Unit, each Owner (other than Declarant) shall adhere to the following:

(a) No holes or other penetrations shall be made in demising walls (party walls) without the permission of the Board. No penetrations of any sort shall be made in the ceiling of any Residential Unit. Acoustical sealant shall be packed around the point of penetration of all pictures and other items hung from the wall that require nailing or screwing.

(b) No modifications shall be made to any Residential Unit which would result in a reduction in the minimum impact insulation class of the Residential Unit.

(c) Loudspeakers for music reproduction and television shall not be supported from or contact demising walls and shall be elevated from the floor by a proper acoustic platform.

(d) Pianos shall have at least ½ inch neoprene pads under the supports to minimize vibration transmission into the structure.

(e) All furniture shall contain rubber castors or felt pads.

7.12 EXTERIOR LIGHTING. No Owner shall install any lighting fixture on the exterior of any Residential Unit.

7.13 DRAINAGE. There shall be no interference with the established drainage pattern over the Property, including without limitation, any Exclusive Use Common Area, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Board. No Owner shall install any tiles or other materials covering any Exclusive Use Patio Area, Exclusive Use Courtyard Area or Exclusive Use Deck Area which may block, interfere or alter the drainage patterns of any patio or balcony area. The Board, in considering between any applications by an Owner to install any surface covering or to allow any plants in pots within an Exclusive Use Courtyard Area, Exclusive Use Deck Area or Exclusive Use Patio Area shall consider the effect on the drainage and shall not allow any installation which changes, interferes with or impairs the established drainage. Each Owner shall have the duty and obligation to maintain the drainage situated within any Exclusive Use Porch Area, Exclusive Use Deck Area and/or Exclusive Use Courtyard Areas free of debris and any other material which may impede the flow of water and to clean such drainage, as may be necessary. No Owner shall dispose of any Hazardous Materials in any drains. If such Owner fails to maintain such drainage and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris and/or restoring such drainage patterns. The Association and its agents shall, after giving reasonable notice, have the right to enter any Exclusive Use Deck Area, Exclusive Use Patio Area and Exclusive Use Courtyard Areas to conduct a cleaning of and to inspect the established system of drainage located thereon.

7.14 ANTENNAE AND SATELLITE DISHES. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("Antenna") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated with respect thereto and any successor statutes or laws ("collectively "Antenna Laws"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (iii) above, such Owner may do so only upon the prior approval of the

Board pursuant to Article 9. The Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws.

#### 7.15 PARKING SPACES.

(a) Authorized Vehicles. The following vehicles are Authorized Vehicles: motorized land vehicles designed and used primarily for non-commercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Subject to Section 7.15(c) below, Authorized Vehicles may be parked in the parking areas in the Property intended for parking of motorized vehicles.

(b) Prohibited Vehicles. The following vehicles are Prohibited Vehicles: recreational vehicles (e.g., motor homes, travel trailers, camper vans, boats, dune buggies, etc.), commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks, trucks with any exterior commercial advertisement, or other similar vehicles), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board. Prohibited Vehicles shall not be parked, stored or kept in any parking areas in the Property.

(c) General Restrictions. Except as provided in Section 3.8.4, all Authorized Vehicles owned or operated by or within the control of an Owner and kept within the Property shall be parked in that Owner's Assigned Parking Space. No vehicle shall be parked in any Parking Space if such vehicle does not completely and clearly fit between the painted parking lines designated for a Parking Space or otherwise physically fit wholly within the designated space or any other portion of the parking areas in the Property designed for ingress and egress of vehicles. There shall be no parking in the Parking Garage that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The parking areas in the Property shall be used for parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes (except for storage in authorized Storage Spaces). No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property. Assigned Parking Spaces and Storage Spaces may be exchanged apart from the conveyance of a Residential Unit only as set forth in Sections 3.8 and 3.9 hereof and shall not otherwise be sold or otherwise separately conveyed apart from conveyance of such Residential Unit. Except as set forth herein, no Assigned Parking Space or Storage Space may be sold, transferred, or assigned to, or retained in the ownership of, any person not an Owner.

(d) Lease of Parking Space. The Owner of a Condominium may lease to other Owners in the Project the Assigned Parking Space(s) which is a part of his or her Condominium, subject to all the requirements of the Governing Documents, as such documents may be amended from time to time. The Owner of a Condominium may not lease an Assigned Parking Space to any Person who is not also an Owner of a Condominium in the Project. The

conveyance of the Condominium by an Owner shall terminate the lease of an Assigned Parking Space. Rental of an Assigned Parking Space shall not give to any lessee the right to vote or any other rights of membership in the Association.

(c) Parking Regulations. The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas not assigned to individual Residential Units, including, without limitation, designating "residential guest parking", "commercial parking," "parking," and "no parking" areas thereon. Any parking areas shall be subject to such further reasonable control and use limitations as the Board may establish. The Board shall determine, in its discretion, whether there is a violation of the parking and vehicular restrictions set forth in this Declaration or established by the Board, and, if such noncompliance is determined by the Board to exist, the Board shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any of the Property pursuant to California Vehicle Code Section 22658.2 or other applicable statute.

(f) Handicap Parking Spaces. Certain parking spaces in the Parking Garage will be designated for use by handicapped persons ("Handicap Parking Spaces") and will be designated as such on the Condominium Plan(s). Such Handicap Parking Spaces may be assigned by Declarant to the Owners of particular Residential Units upon the initial sale or lease of such Residential Units. Declarant shall, upon assigning a Handicap Parking Space to an Owner, designate such assignment in the records of the Association. If any Handicap Parking Spaces remain unassigned after the sale or lease of all the Units in the Project, the Association shall have the right to assign and manage such spaces. The Owners who are assigned Handicap Parking Spaces shall be subject to the rights of the Association to re-assign such parking spaces as provided herein. The Association, upon reasonable notice to the Owner who is an assignee of a Handicap Parking Space who is not, himself, handicapped ("Non-Handicapped Owner"), shall have the right to assign to the Owner or occupant of another Condominium in the Project who is or becomes handicapped (regardless whether the handicapped Owner is a new Owner) ("Handicapped Owner"), the exclusive right to use such Handicap Parking Space; provided that the Handicapped Owner grants to such Non-Handicapped Owner the exclusive right of use of such Owner's Assigned Parking Space. In such case, such Assigned Parking Space may be located in a tandem parking stall, as described below. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles. The Association shall have the authority and be responsible for coordinating the assignment of parking spaces in the Parking Garage pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner become handicapped and wish to use a Handicap Parking Space, forms and methods of notice to be given to the Association and Owner, and procedures for review of the required evidence of handicap status. The Association shall maintain appropriate records of such assignment, including a copy of the evidence provided. In no event shall the Declarant or the Association be held liable if the Declarant or the Association is unable to assign a Handicap Parking Space to a

handicapped Owner because all designated Handicap Parking Spaces have previously been assigned to other handicapped Owners.

(g) If the valet parking service described in Section 3.8.4 is terminated, Owners' rights to use their Assigned Parking Space shall be reinstated, and each Owner will be responsible for parking its own vehicle. If an Owner is assigned only one (1) Assigned Parking Space, that Assigned Parking Space may be located in a tandem parking stall. If this is the case, each Owner using such tandem parking stall will have the right to use either one of the two spaces in such tandem parking stall, but will share this right with another Owner (each a "Tandem Owner"). The Tandem Owner who parks his/her vehicle first at any point in time, shall be required to pull into the inner parking space and the Tandem Owner who parks second shall park in the outer parking space. Each Tandem Owner will be responsible to coordinate and manage access to its vehicle with the other Tandem Owner.

**7.16 OFFENSIVE CONDUCT; NUISANCES.** No noxious or offensive activities, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project. No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which such odor was generated.

**7.17 RENTAL OF RESIDENTIAL UNITS.** An Owner shall be entitled to rent the Owner's Residential Unit subject to the restrictions contained in this Declaration. Any rental or leasing agreement shall (i) be for a period not less than six (6) months; (ii) be in writing, (iii) provide that the lease or rental is subject to the Governing Documents, and (iv) provide that any failure to comply with any provision of this Declaration or the Governing Documents shall be a default under the terms of the lease agreement. A copy of this Declaration and a copy of the Seller's Disclosure Statement provided to Owners by Declarant, shall be made available to each tenant or lessee by the Owner so renting or leasing. Each Owner is responsible to obtain and deliver to the Association, a signed statement from such tenant or lessee, acknowledging that the tenant or lessee has received and reviewed such Seller's Disclosure Statement. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Residential Unit. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease a Residential Unit for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. All Owners who rent their Residential Units shall submit names and contact numbers for their tenants to the management company for the Project.

**7.18 TIME SHARING.** A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods other than pursuant to a written lease as permitted pursuant to Section 7.17 above. The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the

Residential Unit or Residential Units or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

7.19 OUTSIDE DRYING AND LAUNDERING. No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Project and there shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Common Area or Association Property.

7.20 TOXIC OR NOXIOUS MATTER. No person shall dispose of within the Project any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and federal law for any clean-up or cause injury or damage to neighboring property or business elsewhere on the Project.

7.21 AIR POLLUTION. No air pollutants or contaminants sufficient to create a nuisance shall be discharged, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the omission or contaminates, and such controls are applied by the Board.

7.22 STRUCTURAL ALTERATIONS. Except as permitted under Article 9 of the Declaration, no structural alterations to the interior of or Common Area surrounding any Residential Unit shall be made and no plumbing, electrical or other work which would result in the penetration of the unfinished surfaces of the ceilings, walls or floors shall be performed by any Owner without the prior written consent of the Board and, if required under Article 9, the Declarant. An Owner who acquires fee title to two (2) or more adjoining Residential Units, may be permitted to remove the demising wall dividing the two (2) or more Residential Units, so long as the Owner has complied with the requirements and obtained the approvals required under Article 9 of this Declaration.

7.23 POST TENSION SLABS. Certain concrete slabs for the Condominium Building in the Project are reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium and/or personal injury. By accepting a grant deed to a Condominium in the Project, each Owner specifically covenants and agrees that: (1) such Owner shall not cut into or otherwise tamper with the Post Tension Slab or any other concrete floor in the Project; (2) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab or any other concrete floor in the Project so long as such Owner owns any interest in the Residence; (3) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or

subsequent purchaser of the Condominium; and (4) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

7.24 COMPLIANCE WITH LAWS, ETC. Nothing shall be done or kept in any Residential Unit or in the Common Area or the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done or kept in his or her Condominium that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials. No Owner shall allow furniture, furnishings, or other personality belonging to such Owner to remain within any portion of the Common Area or the Association Property except portions subject to Exclusive Use Easements appurtenant to such Owner's Condominium and except as may otherwise be permitted by the Board or the Association Rules. In addition to the foregoing, all Improvements installed or constructed by an Owner within the Project must be completed in accordance with applicable laws, including, but not limited to, the laws, regulations and ordinances of the City.

7.25 VIBRATIONS. No Owner shall install or use in any Residential Unit any fixtures or equipment which will cause unreasonable vibrations, noise or annoyance to the Owners of the other Residential Units or to the Common Area.

7.26 TRASH DISPOSAL. No garbage, trash, rubbish, or other waste material shall be kept or permitted on the Project except in garbage cans, trash containers, trash chutes, or other waste receptacles located on the Project provided for the use of all Owners. All trash must be bagged or otherwise sealed before using any trash chute located in the Project. No odor shall emanate therefrom so as to be unreasonably unsanitary, unsightly, offensive or detrimental to the Owners in the Project. Under no circumstances may explosives, fireworks, or highly flammable materials such as gasoline, kerosene, oil, oil-based paints, or solvents, be disposed of in the trash chutes or anywhere else in the Project. Any and all costs incurred by the Association for the removal of combustible or toxic materials from the trash chutes shall be borne by the offending Owner at such Owner's sole cost and expense.

7.27 STORAGE AREAS. Storage Areas shall be used only for the storage of personal property. In no event shall the Storage Areas be used for the storage of any Hazardous Materials or any other noxious, toxic, or odorous substances and shall be subject to additional limitations set forth in the Association Rules.

7.28 ROOF ACCESS. No Owner, nor its contractors or agents, is ever permitted access to the rooftop of the Condominium Buildings.

7.29 WINDOW CLEANING. Each Owner will cooperate with the Association to provide access to the Association to clean windows in the Condominium Building. The

Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Residential Unit resulting from such entry.

7.30 NOTICE OF AIRPORT IN VICINITY. This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

7.31 INDEMNIFICATION. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and the Association Property that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend such other Owner against, any claim of any person for personal injury or property damage caused by the negligence or willful misconduct of such Owner, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligent or willful misconduct of such Owner or the Owner's Invitees.

## ARTICLE 8

### IMPROVEMENTS

8.1 MAINTENANCE OBLIGATIONS OF OWNERS. Each Owner is responsible for the care and maintenance of those components of each Owner's Residential Unit and Exclusive Use Easement Area designated for maintenance by the Owner on the Maintenance Responsibility Chart.

8.1.1 Quality of Maintenance. All such maintenance shall be performed 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 in compliance with all requirements of the Owners Maintenance Manual, the Maintenance Obligations in this Article, and the Maintenance Responsibility Chart. Any such maintenance, repair or replacement of any of the foregoing which is 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, as provided in Article 9 of this Declaration.

8.1.2 Compliance with Maintenance Obligations. By accepting a deed to a Condominium, Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Owner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Condominium.

8.1.3 Owners Failure to Maintain. If an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

8.1.4 No Alterations. Subject to the provisions of Article 9, no bearing walls, ceilings, floors, other structural or utility bearing portions of the Condominium Buildings housing the Residential Units nor walls enclosing any Exclusive Use Easement Areas may be pierced or otherwise altered or repaired without approval from the Board

8.2 MAINTENANCE OBLIGATIONS OF ASSOCIATION. 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 in accordance with the Maintenance Obligations. The Association shall keep such portions of the Project in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas. The Association shall also be responsible for maintaining any Improvements that a majority of the Voting Power of the Association designates for maintenance by the Association. All costs of maintenance, repairs and replacements for the Property and shall be paid for as Common Expenses as provided in this Declaration.

8.2.1 Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of the Common Area and Association Property occasioned by the presence of wood-destroying pests or organisms. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association. The Association shall give notice of the need to temporarily vacate a Residential Unit to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage pre-paid at the most current address shown on the books of the Association, or

(b) by sending a copy of the notice to the occupants at the Residential Unit address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

8.2.2 Association's Compliance with Maintenance Obligations. The Association will comply with the Maintenance Obligations for the Association Property, Common Area and any other areas to be maintained by the Association in accordance with the requirements of the Association Maintenance Manual and the Maintenance Responsibility Chart.

8.2.3 Damage by Owners. Each Owner is liable to the Association for any damage to the Project if the damage is sustained due to the act of an Owner, or such Owner's guests, tenants or invitees, or any other persons deriving their right to use the Project from the Owner, or such Owner's respective family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy an Enforcement Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be an Enforcement Assessment against such Owner.

8.2.4 Irrigation of Street Trees. The Association shall be responsible for irrigating the street trees located in the public right-of-way adjacent to the Project.

8.3 FUTURE CONSTRUCTION. Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Common Area and Association Property and to Condominiums owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Project.

8.4 COMPLIANCE WITH REQUIREMENTS REGARDING PROJECT STORM WATER POLLUTION. Each Owner and the Association acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the residence which is being purchased by Owner, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals

or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. Each Owner and the Association further acknowledges that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner and the Association may be responsible for any activities by Owner's or Association's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all federal, state, and City requirements and requirements of any other governmental agencies having jurisdiction over the Property. All Owners within the Project and the Association are required to comply with such restrictions. The Association and all Owners are encouraged to consult with the City, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

8.4.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the City in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements that it is responsible for maintaining hereunder in a clean, safe and attractive condition, free and clear of any and all debris. All trash receptacles within the Project shall be covered and closed at all times. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

8.4.2 Liability to Declarant. So long as Declarant owns any Condominium within the Project, if an Owner or the Association is not in compliance with the provisions of this Section and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the applicable portion of the Project to correct such violation. If the Association or any Owner violates the requirements of this Section, such Owner or the Association, as applicable, shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner or the Association of this Section.

## 8.5 INSPECTIONS.

8.5.1 Declarant's Inspections. For a period of ten (10) years after the conveyance of the last Residential Unit in the Project to an Owner, the Declarant shall have the right, but not the obligation, to inspect, or to have a third party consultant inspect, the Common Area, the Association Property and the Exclusive Use Common Areas ("Declarant's Inspections"). The Association and the Owners shall cooperate in granting access to such areas for the Declarant's Inspections. If the Declarant provides copies of written reports resulting from Declarant's Inspections, the Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association.

8.5.2 Association Inspections. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association may contract with (subject to the limitations set forth in Section 4.5.4 of this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Project ("Association Inspections"). The inspectors shall inspect component parts of the Project, including, but not limited to, the Exclusive Use Patio Areas, Exclusive Use Courtyard Areas and Exclusive Use Deck Areas, structural components, parking areas, driveways and walkways and landscaping in accordance with the Association Maintenance Manual. If any of the contractors or subcontractors responsible for constructing any component part of the Project provide the Association with maintenance criteria, maintenance manuals, or warranty requirements, such inspectors shall additionally assist the Association with compliance of same. The Association shall update such manuals and the Association Maintenance Manual on a regular basis. The Association shall be responsible for meeting all requirements under such maintenance manuals, maintenance criteria, or warranty requirements as well as the requirements of the Association Maintenance Manual. Owners shall cooperate with the Association in granting access to Exclusive Use Patio Areas, Exclusive Use Courtyard Areas and Exclusive Use Deck Areas for such inspections. Should such inspector require the inspection of any Residential Units, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days advance notice to the Owner, except in case of emergency. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

8.5.3 Schedule of Inspections. Such inspections shall take place at least annually or as required in the Association Maintenance Manual. The inspectors shall provide

written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of Section 8.5.4 below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes.

8.5.4 Notice to Declarant. For a period of ten (10) years after the conveyance of the last Residential Unit in the Project to an Owner, the Association shall, if requested by Declarant, deliver to the Declarant ten (10) days advance written notice of all Association Inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide the Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

8.6 ENTRY INTO UNIT. Each Owner will cooperate with the Association to provide access to the Association to perform inspections as set forth in Section 8.5. The Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Residential Unit resulting from such entry.

## ARTICLE 9

### ARCHITECTURAL REVIEW

9.1 SCOPE. No Improvements of any kind whatsoever upon or around or any structural modification within any Residential Unit or Exclusive Use Common Area shall be commenced, erected, placed or altered upon or around any Residential Unit or any Exclusive Use Common Area until complete plans and specifications showing the location, nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines ("Plans and Specifications"), have been submitted to and approved in writing by the Board in accordance with the procedures set forth in the Architectural Guidelines. The Board shall not approve any Plans and Specifications without first submitting such Plans and Specifications for review and comment to an architect, landscape architect, engineer or other consultants as deemed appropriate in the determination of the Board based on the nature of the proposed Improvements (collectively the "Outside Consultant"), which Outside Consultant is duly qualified and licensed in the State of California and has no current financial or ownership interest in the Project. The choice of the Board as to the selection of the Outside Consultants shall be deemed to be final. All fees, costs and expenses associated with retaining the Outside Consultant shall be borne by the submitting Owner as provided in Section 9.8 hereof.

Notwithstanding the foregoing, the reconstruction of a Residential Unit or other Improvements that were originally constructed by Declarant or approved by the Board under this Article, shall not require such submittal, so long as such Improvements are constructed in accordance with the original process and specifications and in a manner otherwise consistent with this Article. In the discretion of the Board, inspections of such Improvements in accordance with Section 9.4 hereof may be performed to ensure compliance with the original plans and specifications. In the event of a non-compliance with such plans and specifications, the Board shall have all of the rights to require correction of such work as provided in the Architectural Guidelines.

9.1.1 Designated Exclusive Use Common Area. In addition, any alteration, modification or removal of any Designated Exclusive Use Common Area Walls or Floors or other work involving the penetration of the unfinished surfaces of the ceilings, walls or floors shall, for a period of ten (10) years after the date a certificate of occupancy is issued for the last Residential Unit in the Project, require the prior written consent of the Declarant unless Declarant has notified the Association, in writing, that it (i) waives its consent to the particular work of Improvement or (ii) no longer desires to exercise such right of review and approval for any future works of Improvement. In the case of (i) or (ii) above, the Board shall not grant approval of the removal of a demising wall or floor between two (2) or more adjoining Residential Units which are owned by one (1) Owner unless (a) Outside Consultants consisting of both an architect and structural engineer licensed in the State of California have approved the Plans and Specifications for such Improvements, (b) such Improvements do not adversely impact the structural integrity of the Project, do not contain any common utilities, and do not affect any other Residential Units, and (c) the Plans and Specifications are otherwise in conformance with the requirements of this Declaration and the Architectural Guidelines. If an Owner of two (2) or more Residential Units which have been joined as described above, decides to sell such Residential Units separately, such Owner shall be responsible for replacing all building components which were removed and for performing all work necessary to return the Residential Units to the configuration they were in prior to being joined in accordance with the procedures of this Article 9.

9.2 ARCHITECTURAL GUIDELINES. The Board shall, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for architectural review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that the Architectural Guidelines shall not detract from or conflict with the standards required by this Declaration.

9.3 DUTIES AND POWERS OF BOARD FOR ARCHITECTURAL REVIEW. It shall be the duty of the Board to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof and the Architectural Guidelines, to administer the Architectural Guidelines to ensure that any Improvements constructed within the Property conform to plans

approved by the Board, and to carry out all other duties imposed upon it by the Governing Documents related thereto. The Board may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements within the Property or any portion thereof. Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. The Board may delegate its review powers to an outside consultant experienced with the review of plans and specifications for Improvements, and in such case, such consultant may be compensated by the Association, as further provided in Section 9.8 and 9.9 below.

9.3.1 Time Limitations. The Architectural Guidelines shall set forth the periods for review and approval of Plans and Specifications as set forth in this Article. The Architectural Guidelines may also set forth time limitations for the completion of any Improvements for which approval is required.

9.3.2 Procedures. The Board shall implement the procedures for architectural review set forth in the Architectural Guidelines, which shall be followed by each Owner. The failure of the Board to include any particular standards or guidelines in the Architectural Guidelines shall not limit the right of the Board to enforce standards to protect the overall theme and development of the Property.

9.3.3 Conformity of Plans and Specifications. The Architectural Guidelines shall require the conformity of completed Improvements to the Plans and Specifications approved by the Board and to the Architectural Guidelines. The Board may, but shall not be required to record a notice of noncompletion if the Improvements have not been completed as required under this Declaration or, if permitted by law, to record a notice of noncompliance if the Improvements are not in conformance with the requirements of this Declaration identifying the violating Residential Unit and its Owner and specifying the reason for the notice executed by the appropriate Board, in the Office of the County Recorder of San Diego County, California, and provide such notice to such Owner after the expiration of the time limitations established pursuant to Section 9.3.1 above or institute legal proceedings to enforce compliance or completion of the Improvements approved by the Board.

9.4 INSPECTION AND CORRECTION OF WORK. The Board or its duly authorized representative may enter into any Residential Unit, from time to time, as provided below during the course of or after the construction or installation of any Improvements for the purpose of inspecting such construction and/or installation to determine whether it was performed in substantial compliance with the approved Plans and Specifications. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the Residential Unit of such non-compliance not more than thirty (30) days after the inspection specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. The Board may not enter onto a Residential Unit without obtaining the prior permission of the Owner or occupant of such Residential Unit; provided, however, that such prior permission shall not be

unreasonably withheld and shall be given for entry by the Board during the daylight hours within forty-eight (48) hours of the request for entry.

9.4.1 Non-Compliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Board after affording the Owner Notice and Hearing, shall determine whether there is a non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

9.4.2 Failure to Notify. If for any reason the Board fails to notify the Owner of any non-compliance within ninety (90) days after receipt of said notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

9.5 GOVERNMENT REGULATIONS. If there is any conflict between the requirements or actions of the Board and the mandatory regulations or ordinances of any governmental entity relating to the Property, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control and the Board shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Board of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements"); provided, however, if the additional requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply. Although the Association has the right to require evidence of City approval of the Improvements as a condition to review of the final Plans and Specifications, nothing contained herein shall impose on the Association the duty to obtain evidence of approval by the City of any Improvements as a condition to issuance of final approval or any liability on the Association as a result of the failure of the Association to request evidence of City approval.

9.6 APPOINTMENT OF ARCHITECTURAL COMMITTEE. The Board shall have the right to delegate its review and approval rights under this Article 9 to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of three (3) members. One (1) alternate member may be designated by the Board to act as a substitute on the

Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee.

9.7 DILIGENCE IN CONSTRUCTION. Upon final approval by the Board of any Plans and Specifications, the Owners shall promptly commence construction and diligently pursue the same to completion.

9.8 FEE FOR REVIEW. The Board shall have the right to retain third party consultants, and establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee. The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner, and such Owner shall be liable for payment of such engineers and/or consultants.

9.9 COMPENSATION. The members of any Architectural Committee appointed by the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board.

9.10 INTERPRETATION AND APPEAL. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected. Notwithstanding the foregoing, in the event an Architectural Committee is appointed and the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant.

9.11 WAIVER. The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.12 ESTOPPEL CERTIFICATE. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by a majority of its members, certifying (with respect to any Residential Unit of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

9.13 LIABILITY. Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of the Project or any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 9.12, whether or not the facts therein are correct, provided, however, that such Board or Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board or Architectural Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or

any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board or Architectural Committee, as the case may be.

9.14 NON-APPLICABILITY TO DECLARANT. The provisions of this Article shall not apply to any Improvements installed by the Declarant or repaired pursuant to Civil Code Section 895 et seq. and the Board shall not have any rights of review or approval with respect thereto.

9.15 GOVERNMENT REQUIREMENTS. The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

9.16 AMENDMENTS. Notwithstanding the Article hereof entitled "Amendments," no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Residential Unit in the Project without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Residential Units in the Project.

9.17 VARIANCES. The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board. 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 the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Residential Unit, including, but not limited to, zoning ordinances or other requirements imposed by the City or any other governmental authority.

## ARTICLE 10

### DEVELOPMENT RIGHTS

10.1 LIMITATIONS OF RESTRICTIONS. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Units is essential to the establishment and marketing of the Property as a first-class condominium community. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

10.2 ACCESS. For a period of ten (10) years after the conveyance by Declarant of the last Condominium in the Project under a Public Report, Declarant, its contractors and subcontractors shall have the right to obtain access over and across the Common Area and Association Property of the Project or do within any Residential Unit owned by it whatever is reasonably necessary or advisable in connection with the completion, marketing and maintenance of the Project.

10.3 RIGHTS TO COMPLETE CONSTRUCTION. Until the seventh (7th) anniversary of the original issuance of the Public Report, Declarant, its contractors and subcontractors shall have the rights set forth below.

10.3.1 Construct Improvements. Declarant, its contractors and subcontractors shall have the right to erect, construct and maintain on the Common Area and the Association Property of the Project or within any Residential Unit owned by it such structures or Improvements, including, but not limited to, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project by sale, lease or otherwise, as determined by Declarant in its sole discretion.

10.3.2 Grant Easements. Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across said Common Area and the Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith; and (ii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area and the Association Property shall be subject to any dedication stated in any subdivision map, Condominium Plan for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area and the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County and the State and shall include the right of ingress and egress over the Common Area and the Association Property by vehicles of the City, the County and the State and such utility companies to properly install, maintain, repair, replace and otherwise service such Utility Facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City, the County or the State for maintenance or operation of any of the Common Area and the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or City or County of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures

and facilities placed upon the Common Area and the Association Property by utility companies, the Common Area/Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City and County furthermore is granted an easement across the Common Area/Association Property for ingress and egress for use by emergency vehicles of the City or County.

10.4 SIZE AND APPEARANCE OF PROJECT. Declarant shall not be prevented from changing the exterior appearance of Common Area and the Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

10.5 MARKETING RIGHTS.

10.5.1 General Rights. Subject to the limitations of this Declaration, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Units or Common Area and the Association Property within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Residential Units; (ii) make reasonable use of the Common Area and the Association Property and facilities for the marketing of Residential Units (including without limitation, granting rights of ingress and egress over the Association Property and the Common Areas to prospective purchasers and tenants in connection with such marketing activities; (iii) post signs, flags and banners in connection with its marketing; and (iv) conduct its business of disposing of Residential Units by sale, lease or otherwise. An affiliate of Declarant is currently developing another condominium project in the downtown San Diego area, known as Cortez Blu. Declarant and its affiliates shall also have the rights described in Subsections (i) through (iv) above to market from a Residential Unit in the Acqua Vista project owned by Declarant, units located in Cortez Blu, for a period of two (2) years from the close of escrow of the first Residential Unit in the Project.

10.5.2 Agreement for Extended Use. If following the fifth (5th) anniversary of the original issuance of the Public Report, Declarant requires exclusive use of any portion of the Common Area and the Association Property for marketing purposes, Declarant may use the Common Area and the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area and the Association Property and any Residential Units owned by Declarant as an Owner.

10.6 TITLE RIGHTS. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without

limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.7 AMENDMENT. The provisions of this Article may not be amended without the consent of Declarant until the later to occur of (i) the date all of the Residential Units in the Project owned by Declarant have been conveyed, or (ii) the date Declarant's rights hereunder have expired.

10.8 SUPPLEMENTARY DECLARATION. Declarant shall have the right to record a Supplementary Declaration to (a) identify areas referenced in this Declaration to be maintained by the Association, (b) make technical or minor corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s) and/or (c) designate any easements or other rights which may have been granted over the Encroachment Areas.

10.9 ASSIGNMENT. Notwithstanding the provisions regarding the assignment of Declarant's rights and duties set forth in Section 2.20, Declarant, at any time prior to or concurrent with its dissolution pursuant to law, may assign its rights set forth in Sections 7.14(b), 8.5.1, 8.5.4, 9.1.1, 10.2 and 15.7 separate from the assignment described in Section 2.20.

## ARTICLE 11

### INSURANCE

11.1 LIABILITY INSURANCE. The Association shall obtain and maintain commercial general liability insurance insuring the Association, the Board, any manager, the Declarant, the City and its officers, employees, contractors and agents, and the Owners and occupants of Condominiums and their Invitees against any liability incident to the ownership or use of the Common Area and the Association Property and the performance by the Association of its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000). Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

11.2 PROPERTY INSURANCE. The Association shall keep (i) any Improvements within the Common Area, the Association Property and the Encroachment Areas and certain components of the Residential Units described in Section 11.2.1(b) below to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the

maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies) and (ii) all personal property owned by the Association insured with coverage in the maximum insurable fair market value of such personal property as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Common Area, the Association Property, the Encroachment Areas and personal property owned by the Association, shall be payable to the Association. In the event of any loss, damage or destruction to the Common Area, the Association Property or the Encroachment Areas, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 Description of Policy Coverages. The policy shall cover the following real and personal property:

(a) Common Area and the Association Property. All Improvements within the Common Area, the Association Property and the Encroachment Areas including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the Condominium Building and not located within a Residential Unit; fences; monuments; lighting fixtures; exterior signs; personal property owned or maintained by the Association; and recreational facilities; but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage; and

(b) Residential Units. Interior walls and doors; ceiling, utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters, but excluding any personal property located in the Residential Unit or Exclusive Use Common Area; and excluding any Improvements or upgrades to any of the foregoing installed by the Owner to the extent of any such Improvement or upgrade; and

(c) Landscaping. Lawn, trees, shrubs and plants located in the Common Area and the Association Property.

11.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

11.2.3 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

11.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

11.2.5 Waiver of Subrogation. Except as provided in Section 7.31 of this Declaration, all rights of subrogation between the Association and the Owners and their Invitees and First Mortgagees are waived. The insurance policies obtained by the Association shall include a waiver of all subrogation rights of the Association's insurer against any Owner and their Invitees and First Mortgagees; provided, however, that any failure to obtain such a waiver from the insurer shall not defeat or impair the foregoing waiver between the Association and the Owners and their Invitees and First Mortgagees set forth herein. Insurance proceeds for Improvements in the Common Area, Association Property and Encroachment Areas and personalty owned by the Association shall be payable to the Association.

11.2.6 Additional Insureds. The policies shall name as insured the Association, the Owners, the Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under Article 9 of this Declaration, the management company of the Association, if requested by the Association, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the Trustee (as defined below).

11.3 INDIVIDUAL INSURANCE. Each Owner shall maintain property insurance against losses to personal property located within the Residential Unit or Exclusive Use Common Areas and to any floor and wall surface materials (e.g. paint, wallpaper, mirrors, carpets, tile and hardwood floors), upgrades to the Improvements or Improvements installed by an Owner located within the Residential Unit or Exclusive Use Common Areas (including landscaping Improvements) and liability insurance against any liability resulting from any injury or damage occurring within the Residential Unit or Exclusive Use Common Areas. In addition, an Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. The Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Association and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association and any first Mortgagee of a First Mortgage on the Owner's Condominium, provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Association set forth herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described above. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a Special Assessment against the Owner's Condominium to collect the amount of the diminution.

11.4 FIDELITY BOND. The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Residential Units plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.5 WORKER'S COMPENSATION INSURANCE. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

11.6 ERRORS AND OMISSIONS INSURANCE. The Association shall maintain a policy insuring the Association's officers and directors against liability for their negligent acts or omissions well acting their capacity as officers and directors. The limits of such insurance shall be not less than One Million Dollars for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of California Civil Code Section 1365.7.

11.7 OTHER INSURANCE. The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.8 COPIES OF POLICIES. Copies of all such insurance policies of the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association for a period of ten (10) years after the date of issuance or such longer period as may be required by law, and open for inspection by Owners at reasonable times. All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

11.9 REVIEW OF INSURANCE. The Board shall review the adequacy of all insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

11.10 BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE. Subject to the provisions of Section 11.1 and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this Article 11 in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article 11, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.11 TRUSTEE. All insurance proceeds payable under Sections 11.2 and 11.3, subject to the rights of Mortgagees under Section 11.12, may be paid to a trustee (the "Trustee"), to be

held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank in the County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

11.12 ADJUSTMENT OF LOSSES. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Sections 11.1 and 11.2. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

11.13 DISTRIBUTION TO MORTGAGEES. Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Condominium as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

11.14 COMPLIANCE WITH FEDERAL REGULATIONS. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of the above is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

## ARTICLE 12

## DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 RESTORATION DEFINED. As used in this Article 12, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 INSURED CASUALTY. If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of Section 12.5.

12.3 RESTORATION PROCEEDS.

12.3.1 Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

12.3.2 Insufficient Proceeds. If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment pursuant to Subsection (a) below; and second to use a plan of alternative reconstruction pursuant to Subsection (b) below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to Subsection (c) below.

(a) Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in this Section 12.3.2 are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to

Section 12.3.1 above, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Subsection (b).

(b) Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to Section 12.3.2 and Subsection (a) above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose Residential Units were materially damaged, as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of Subsection (c) shall apply.

(c) Sale of Building. If the damaged Improvement is part of a Condominium Building ("Damaged Building"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of Subsections (a) and (b) above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Residential Units therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (1) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the Project, and appropriately landscape or otherwise improve the Project, or (iii) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of this Article 12 and the provisions of this Declaration. In lieu of selling the Damaged Building to a third Person, the Association may purchase the Condominium Building on satisfaction of the following conditions:

(i) Members holding 67% of the total voting power (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any special assessment needed to fund the purchase price shall be levied against all Condominiums, including the Condominiums within the Damaged Building;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and/or to remove and appropriately

landscape the remaining portions of the Project. For this purpose, no Condominium that is being purchased shall be subject to any assessment intended to be used as a source of such funds.

(d) Distribution of Proceeds. The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Condominiums in the Damaged Building and their respective Mortgagees, in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Building is removed and not restored so that the new building contains the same number of Condominiums as the removed building, the Board shall take appropriate steps to adjust the property interests of the remaining Condominium Owners and to effect such amendments as may be necessary to the Declaration, the Condominium Plan and the Map to reflect the revised property interests and other related changes.

12.4 REBUILDING CONTRACT. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 INSURANCE TRUSTEE. All property insurance proceeds payable to the Association under the policy described in Section 12.2, subject to the rights of Mortgagees under Article 14, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

12.6 AUTHORITY TO EFFECT CHANGES. If any building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Condominium Building may be repaired or

reconstructed in a manner that alters the boundaries of the Residential Units or Common Area and Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board of Directors, by Members holding a majority of the total voting power of the Association, and by the holders of any First Mortgages to the extent required herein;

(ii) the Board of Directors has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the Condominium Building;

(iii) the alteration does not materially change the location of any Residential Unit or materially reduce the size of any Residential Unit without the consent of the Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Residential Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Residential Unit by more than 10% from that which was originally constructed by Declarant;

(iv) the Board of Directors has determined that any alteration that will relocate or reduce the Common Area and Association Property will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Area and Association Property; and

(v) the Condominium Plan is amended to reflect the alteration to the Residential Units or Common Area and Association Property.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Residential Unit or Common Area and Association Property as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

**12.7 MINOR REPAIR AND RECONSTRUCTION.** The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five (5%) percent of the annual budgeted gross expenses of the Association. The Board is expressly empowered to levy a Reconstruction Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

**12.8 DAMAGE OR DESTRUCTION TO A UNIT.** If there is damage or destruction to any Residential Unit, the Owner thereof shall, at its own cost and expense, perform interior

repair and restoration which shall be completed as promptly as practical and in a lawful and workmanlike manner, and, to the extent required under Article 9 and the Architectural Guidelines, in accordance with plans approved by the Board as provided in Article 9 herein.

12.9 CONDEMNATION OF COMMON AREA/ASSOCIATION PROPERTY. If any portion of the Common Area and/or the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area and Association Property, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area and/or the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area and/or the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

## ARTICLE 13

### PARTITION AND SEVERABILITY OF INTERESTS

13.1 SUSPENSION. The right of partition is suspended pursuant to California Civil Code Section 1359 as to the Project. Nothing in this Declaration shall prevent partition or division of interest between joint or common owners of any Condominium.

13.2 PARTITION. Notwithstanding the foregoing, judicial partition shall be permitted as set forth below.

13.2.1 No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Holders who represent at least more than fifty percent (50%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(c) As allowed by California law, including Civil Code Section 1359, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

**13.3 DISTRIBUTION OF PROCEEDS.** Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Residential Units at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

**13.4 POWER OF ATTORNEY.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code Section 1359 or any successor statute or law. The power of attorney shall:

13.4.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

13.4.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all Institutional Mortgagees; and

13.4.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

**13.5 PROHIBITION AGAINST SEVERANCE.** An Owner shall not be entitled to sever such Owner's Residential Unit from such Owner's membership in the Association, and shall not be entitled to sever such Owner's Residential Unit and such Owner's membership from such Owner's undivided interest in the Common Area and Association Property for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Residential Unit over the Common Area and Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358 or any successor statute or law.

Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in Section 13.2 in which the right to partition the Project is suspended thereunder.

13.6 CONVEYANCES. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## ARTICLE 14

### RIGHTS OF MORTGAGEES

14.1 CONFLICT. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

14.2 LIABILITY FOR UNPAID ASSESSMENTS. Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

14.3 PAYMENT OF TAXES AND INSURANCE. All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual condominium and not the Project as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area or Improvements situated thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

14.4 NOTICE TO ELIGIBLE HOLDERS. An Eligible Holder is entitled to timely written notice of the following events:

14.4.1 Any condemnation loss or casualty loss that affects either a material portion of the Project or the Residential Unit on which the Eligible Holder holds a First Mortgage;

14.4.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

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

14.4.4 Any proposal to take any action specified in this Article or in the Article hercof entitled "Destruction of Improvements and Condemnation;"

14.4.5 Any default by the Owner-Mortgagor of a Condominium that is subject to a First Mortgage held by the Eligible Holder in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

14.4.6 Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

14.5 RESERVE FUND. The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area and Association Property Improvements that the Association is obligated to maintain.

14.6 INSPECTION OF BOOKS AND RECORDS. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

14.7 FINANCIAL STATEMENTS. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

14.8 VOTING RIGHTS OF MORTGAGEES. For purpose of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

14.9 ACTIONS REQUIRING ELIGIBLE HOLDER APPROVAL. Unless at least sixty-seven percent (67%) of the Eligible Holders and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Condominiums and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Project by the Association and Owners shall not be deemed a transfer within the meaning of this Section);
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Units, the exterior maintenance of Residential Units, or the upkeep of lawns, plantings or other landscaping in the Project;
- (d) By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;
- (e) Partition or subdivide a Condominium;
- (f) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area or Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(g) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

**14.10 VOTES FOR TERMINATION OF PROJECT.** Any election to terminate the legal status of the Project as a Condominium project shall require:

14.10.1 The approval of at least more than fifty percent (50%) of the Eligible Holders and sixty-seven percent (67%) of the total voting power of the Association if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

14.10.2 The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders, if Section 14.10.1 is not applicable.

**14.11 CONDEMNATION OR DESTRUCTION.** In the event a portion of the Project is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project unless more than fifty percent (50%) of the Eligible Holders approve the taking of other action by the Association.

**14.12 SELF-MANAGEMENT.** The vote or approval by written ballot of sixty-seven percent (67%) of the total voting power of the Association and more than fifty percent (50%) of the Eligible Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Holder at any time.

**14.13 MORTGAGEE PROTECTION.** A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

**14.14 SUBORDINATION.** The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 1367, and any successor statutes or laws, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Condominiums. Sale or transfer of any Condominiums shall not effect the assessment lien.

**14.15 DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS.** No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Common Area or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or

other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

14.16 VOTING RIGHTS ON DEFAULT. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the Mortgagee or his representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

14.17 FORECLOSURE. If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

14.18 NON-CURABLE BREACH. Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

14.19 LOAN TO FACILITATE. Any Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

14.20 APPEARANCE AT MEETINGS. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

14.21 RIGHT TO FURNISH INFORMATION. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

14.22 INAPPLICABILITY OF RIGHT OF FIRST REFUSAL TO MORTGAGEE. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or Ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

## ARTICLE 15

## AMENDMENTS

15.1 AMENDMENT BEFORE THE CLOSE OF FIRST SALE. Before the close of the first sale of a Residential Unit to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Office of the County Recorder.

15.2 AMENDMENTS AFTER THE CLOSE OF FIRST SALE. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Residential Unit in the Project to an Owner other than Declarant and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least more than fifty percent (50%) of the voting power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of (a) at least more than fifty percent (50%) of the total voting power of the Association and (b) at least more than fifty percent (50%) of the voting power of the Members of the Association, other than Declarant, has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder. In addition to the foregoing, in the case of any material amendment, the vote of a majority of the Eligible Holders (based on one vote for each Mortgage owned) and sixty-seven percent (67%) of the voting power of each class of Members (or sixty-seven percent (67%) of the Owners) shall also be required. "Material Amendment" shall mean, for the purposes of this Section 15.2, any amendments to provisions of this Declaration governing any of the following subjects:

15.2.1 The fundamental purpose for which the Project was created (such as a change from residential use to a different use);

15.2.2 Assessments, collection of assessments, assessment liens and subordination thereof;

15.2.3 The reserve for repair and replacement of the Common Area and Association Property;

- 15.2.4 Property maintenance obligations;
- 15.2.5 Casualty and liability insurance or fidelity bond requirements;
- 15.2.6 Reconstruction in the event of damage or destruction;
- 15.2.7 Rights to use the Common Area and the Association Property;
- 15.2.8 Reallocation of any interests in the Common Area;
- 15.2.9 Voting;

15.2.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;

15.2.11 Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project, the redefinition of Residential Unit boundaries or the conversion of a Residential Unit or Residential Units into Common Area or Association Property; and

15.2.12 Imposition of any restriction on any Owner's right to lease, sell or transfer his Residential Unit.

Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in Sections 15.2.1, 15.2.6, 15.2.8, 15.2.9, 15.2.10, 15.2.11 and 15.2.12 may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Eligible Holders (based upon (1) vote for each such Eligible Holder). Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within thirty (30) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

**15.3 AMENDMENT REGARDING INITIATION OF CONSTRUCTION DEFECT CLAIMS.** Notwithstanding anything to the contrary contained in this Declaration, Sections 2.6,

2.42, 4.3.10, 4.4.4, 4.4.7, 4.4.13, 5.1.3, 5.2.3, 8.1.3 and 16.3 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the Voting Power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

15.4 CONFLICT WITH ARTICLE 14 OR OTHER PROVISIONS OF THIS DECLARATION. To the extent any provisions of this Article conflict with the provisions of Article 14 or any other provision of this Declaration except those contained in Section 15.2, the provisions of Article 14 or the other provisions shall control.

15.5 BUSINESS AND PROFESSIONS CODE SECTION 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 and any successor statutes or laws, to the extent such Section is applicable.

15.6 RELIANCE ON AMENDMENTS. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

15.7 NO AMENDMENT TO SECTION 16.4. Notwithstanding anything to the contrary contained herein, no amendment to the provisions of Section 16.4, including Sections 16.4.1 through 16.4.14, may be made for a period of ten (10) years after the conveyance by Declarant of the last Condominium in the Project without the prior written consent of Declarant.

## ARTICLE 16

### ENFORCEMENT

16.1 TERM. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

### 16.2 ENFORCEMENT AND NONWAIVER.

16.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and

restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

16.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 16.2.1, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between a Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

16.3 NOTICE OF ACTIONS AGAINST DECLARANT. The Association shall comply with the provisions of California Civil Code Section 1368.4 and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for alleged damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and any successor statutes or laws.

16.4 PROVISIONS GOVERNING CONSTRUCTION DEFECT (AND SIMILAR) CLAIMS.

16.4.1 Procedure for Asserting and Responding to Claims. In the event of any defect or suspected or alleged defect in any Improvement(s), including Improvement(s) constructed by Declarant within the Common Area and/or Association Property, or in connection with any Improvement which the Association has the right or obligation to maintain pursuant to this Declaration or which is integrally related to damage to the Common Areas or separate interests that the Association is obligated to maintain or repair whether or not located within the Common Area and/or Association Property, then the Association (as well as any Owner who is not legally obligated to pursue such matter via the procedures of Declarant's "Home Builder's Limited Warranty Registration Form" or the notice recorded as Instrument 2003-0138450 in the Official Records of the County and referred to in this Declaration as the "Notice of Land

Servitudes”), a copy of which is attached hereto as Supplement 1, shall pursue satisfaction of such claims only in the manner provided in this Section (herein, any one or more of the foregoing persons are referred to as a “Claimant” and a claim or claims within the scope of this Section are referred to as “Property Claim(s)”). Nothing herein is intended to, or shall be construed to expand the standing under current law of the Association to bring litigation on behalf of itself or of the Owners for construction related matters.

(a) In regard to election of statutory construction defect resolution procedure: All Property Claims shall be asserted and advanced by the Claimant subject to the procedures set forth in Title 7 of Part 2 of Division 2 of the California Civil Code (commencing at Section 895 thereof, and referred to herein as “SB 800”), as more fully specified in and augmented by the provisions of subsection (b) of this Section, in lieu of the provisions of Section 1375 et seq. of the Civil Code (the “Calderon Procedure”); provided, however, if statutory law or court decisions in effect at the time a Property Claim is asserted prohibit the election and application of the SB 800 provisions in lieu of the Calderon Procedure, then the Calderon Procedure shall govern and shall be strictly followed.

(b) In regard to augmentation of Calderon procedure if SB 800 is not operative: If pursuant to subsection (a), above, SB 800 is rendered legally inapplicable to Property Claims, then the provisions of the Calderon Procedure shall be supplemented by the provisions of the following paragraphs (i) through (iii) to the maximum extent permitted by law. In the event that relevant law prohibits or prevents the supplementation of the Calderon Procedure by any one or more of the items listed, however, then the supplemental item(s) shall be negated and of no force or effect:

(i) Declarant, its successors-in-interest, or its or their authorized representatives shall determine the material and methods to be used in performing any repair, replacement or cure of a Property Claim so long as the material and method is commercially reasonable and meets applicable industry standards.

(ii) In order to effectuate the statutory scheme as set forth in the Calderon Procedure, in regard to disputes subject to this subsection (b) the terms “association”, “association’s board of directors”, “board”, or such similar term used in the statute shall be interpreted to mean the Claimant.

(iii) Any unresolved dispute over such Property Claim after the implementation of the Calderon Procedure shall be resolved pursuant to the arbitration provisions of Section 16.5, below unless prohibited by law.

**16.4.2 SB 800 “Opt-out” Election and Related Provisions.** Pursuant to the provisions of Section 914 of the California Civil Code (which is part of the body of law identified above as SB 800), Declarant has elected to adopt nonadversarial contractual provisions which will apply to all Owners and, to the extent permitted by law, to the Association. In the event any Claimant asserts any Property Claim in the nature of an “actionable defect” in the

property (as that term in quotation marks is defined in California Civil Code Section 896 et seq.), then the nonadversarial contractual provisions identified above as the "Notice of Land Servitudes" shall govern, to the exclusion of all other dispute resolution procedures.

16.4.3 Provisions For Legal Action Upon Failure of Dispute Resolution Procedures. Prior to the initiation of legal action in the nature of litigation, arbitration or judicial reference (herein referred to as "legal actions" or "legal proceedings") in regard to Property Claims in which the Association is the Claimant, whether such Property Claims have been pursued via SB 800 or via the Calderon Procedure as required by this Section 16.4, the Association shall satisfy the requirements of Section 1368.4 of the California Civil Code prior to initiating such legal action, which legal action shall be governed by the provisions of Section 16.5 hereof. In addition to the notification required by that Section 1368.4, the notice given by the Association to its Members shall include the following additional information unless statutory law or applicable court decisions prohibit such inclusion, in which event any such prohibited item listed below shall be negated and of no force or effect:

- (a) a description of the attempts of Declarant to correct the Property Claim(s);
- (b) a certification from an engineer or architect licensed in the State of California that such alleged Property Claim(s) exist;
- (c) a description of the scope of work necessary to cure such Property Claim(s) along with an estimated cost of repair;
- (d) the name and professional background of the attorney retained or proposed to be retained by the Association to pursue the Property Claim(s), accompanied by a description of the fee arrangement (or proposed fee arrangement) between such attorney and the Association and a good faith estimate of attorneys' fees and expert fees and costs necessary to pursue the Property claim(s);
- (e) the source of the funds which will be used to pay attorney and expert witness fees and expenses;
- (f) the estimated time necessary to conclude the legal action.
- (g) unless otherwise prohibited by applicable law, the Association may not file the contemplated legal action unless approved by affirmative vote of the Members as more fully specified in Section 4.4.7 herein.

16.4.4 Application of Award Proceeds. Awards or judgments in favor of the Association, its Members or any Owner resulting from litigation (if permitted herein or required by law), arbitration and/or judicial reference in respect to Property Claims shall be utilized, first, to pay costs incurred by the Association or the respective Members in pursuing such Property

Claim, including but not limited to payment of insurance deductibles (or self insured retentions), payment of (i) attorneys' fees, (ii) fees charged by experts, and (iii) court costs; second, to pay the cost of correcting the condition which formed the basis for such Property Claims, and third, to the extent that proceeds still remain after that application of proceeds, then to pay and/or pre-pay any unpaid Special Assessments levied against the Members who were claimants in pursuing such Property Claims and finally for deposit in the general account of the Association to be credited as pre-payment of future Regular Assessments in respect to those same Members.

Nothing set forth in this Section 16.4 shall be construed to impose any obligation on Declarant to inspect, cure, repair, or replace any item or Property Claim which Declarant is not otherwise obligated to do under applicable law or under any warranty provided by Declarant in connection with the sale of the Condominiums, the Common Area or the Association Property and/or the Improvements constructed thereon.

Arbitration procedures required by the provisions of this Declaration, including those of Section 16.5 herein, are adopted as permitted by the Federal Arbitration Act (9 U.S.C. §§ 1-16), which shall control the dispute in question to the exclusion of any inconsistent state law, regulation or judicial decision. Initial fees and costs of the arbitration service for any arbitration hereunder shall, for disputes in which Declarant is a party, be advanced by Declarant, and if Declarant is not a party then shall be advanced by the person bringing the arbitration, but each party to the arbitration shall bear his, her or its own legal fees and costs (including expert witness costs), if any, and the final arbitration costs shall be allocated as provided by the arbitrator unless the law of the State of California requires otherwise.

**16.5 ARBITRATION OF DISPUTES.** NOTICE: THE PROVISIONS OF THIS SECTION 16.5 ARE INTENDED TO COMPLY WITH RULE 2791.8 OF TITLE 10 OF THE CALIFORNIA CODE OF REGULATIONS. ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS DECLARATION SHALL BE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND DECLARANT, THE ASSOCIATION, AND THE OWNERS ARE EACH THEREBY GIVING UP ANY RIGHTS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, ALONG WITH JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THIS SECTION. IF A CLAIMANT REFUSES TO VOLUNTARILY SUBMIT TO ARBITRATION THE CLAIMANT MAY NEVERTHELESS BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IT IS THE INTENT OF THE PROVISIONS OF THIS SECTION TO IMPLEMENT THE PROVISIONS AUTHORIZED BY THE FEDERAL ARBITRATION ACT TO THE MAXIMUM EXTENT PERMITTED BY LAW AND TO RESOLVE ANY CONFLICTS IN STATE LAW IN FAVOR OF THAT FEDERAL ENACTMENT.

**16.5.1 Legal Actions Arising Out of SB 800 Dispute Resolution Procedures.** In the event that dispute resolution of Property Claims pursuant to Section 16.4.1(a) has been unsuccessful, then the arbitration procedure as set forth in the recorded Notice of Land

Servitudes (as identified in that Section 16.4) shall serve as the exclusive method for resolving such Property Claims.

16.5.2 Legal Actions Arising Out of Calderon Procedure and/or Other Disputes.

In the event that dispute resolution of Property Claims pursuant to Section 16.4 has been unsuccessful, or in the event that any other matter pursuant to this Declaration cannot be resolved without resort to legal action, then the arbitration procedure as set forth in this subsection 16.5.2 shall serve as the exclusive method for resolving such matters.

(I) THE PERSON ASSERTING A CLAIM (WHICH TERM SHALL INCLUDE BUT IS NOT NECESSARILY LIMITED TO "PROPERTY CLAIMS" WHICH WERE NOT RESOLVED PURSUANT TO THE CALDERON PROCEDURE DESCRIBED IN SECTION 16.4.1(b) SHALL SERVE A DEMAND ("ARBITRATION DEMAND") FOR ARBITRATION ON ALL OTHER PERSONS WHO ARE INVOLVED IN SUCH DISPUTE, AND THE DISPUTE SHALL BE SUBMITTED TO A NEUTRAL ARBITRATION PROCEDURE CONDUCTED BY A NEUTRAL AND IMPARTIAL ARBITRATOR. IF DECLARANT IS A PARTY TO THE ARBITRATION DEMAND, THEN DECLARANT SHALL ADVANCE THE FEES NECESSARY TO INITIATE THE ARBITRATION; HOWEVER, THE FINAL ALLOCATION OF COSTS AND FEES SHALL BE AS DETERMINED BY THE ARBITRATOR(S).

(II) IF THE PARTIES AGREE ON THE SELECTION OF AN ARBITRATOR, THE PERSON SO NAMED SHALL BE THE ARBITRATOR. IF NO AGREEMENT ON THE SELECTION OF AN ARBITRATOR IS REACHED WITHIN TEN (10) DAYS AFTER DEMAND FOR ARBITRATION, THEN ANY PARTY TO THE DISPUTE SHALL OBTAIN A LIST OF FIVE (5) CANDIDATE ARBITRATORS FROM THE GEOGRAPHICALLY CLOSEST OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION (THE "SERVICE"), SUCH LIST TO BE RANKED AND NUMBERED IN ANY ORDER AS DETERMINED BY THAT SERVICE. IF THE PARTIES CAN NOT AGREE WITHIN THREE (3) DAYS THEREAFTER ON A PERSON NAMED ON THAT LIST, EACH PARTY SHALL WITHIN THREE (3) ADDITIONAL DAYS PROVIDE THE OTHER WITH NOTICE OF DELETING THREE NAMES FROM THAT LIST. IF ONE OR MORE OF THE LISTED NAMES SURVIVE THAT DELETION PROCESS, THE NAME WITH THE LOWEST RANKING NUMBER AS PROVIDED BY THE SERVICE SHALL BE THE ARBITRATOR. IF NO NAME SURVIVES THE DELETION PROCESS, THE SERVICE SHALL BE REQUIRED TO PROVIDE FIVE ADDITIONAL NAMES AND THE PROCESS SHALL BE CONTINUED UNTIL AN ARBITRATOR IS SELECTED BY THAT PROCESS; HOWEVER, IN THE EVENT OF A FAILURE OF THE PARTIES TO SELECT THE ARBITRATOR PRIOR TO THE FIFTIETH (50TH) DAY AFTER THE INITIAL ARBITRATION NOTICE, THE SERVICE SHALL SELECT THE ARBITRATOR SO THAT THE SELECTION IS ANNOUNCED ON OR BEFORE THE SIXTIETH (60TH) DAY AFTER THE ARBITRATION NOTICE.

NOTWITHSTANDING THE FOREGOING PROVISIONS, ANY ARBITRATOR MAY BE CHALLENGED PURSUANT TO THE GROUNDS LISTED IN SECTION 1297.121 OR 1297.124 OF THE CODE OF CIVIL PROCEDURE. SHOULD ANY PARTY TO THE DISPUTE REFUSE TO PARTICIPATE IN THE ABOVE PROCEDURE, OR TO FURNISH THE ARBITRATOR WITH ANY NECESSARY PAPERS OR INFORMATION, THE ARBITRATOR SELECTED BY THE OTHER PARTY OR PARTIES IS HEREBY EMPOWERED TO PROCEED EX PARTE. THE ARBITRATION SHALL BE CONDUCTED UNDER THE PROCEDURES SET FORTH IN CHAPTER 3 OF TITLE 9 OF PART 3 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, OR SUCH OTHER PROCEDURES AGREEABLE TO THE PARTIES TO THE DISPUTE; EXCEPT THAT PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE PERTAINING TO DISCOVERY AND THE PROVISIONS OF THE CALIFORNIA EVIDENCE CODE SHALL BE APPLICABLE TO SUCH PROCEEDING AND EXCEPT THAT THE PARTIES INTEND THAT THE ARBITRATOR SHALL ACCEPT THE RESOLUTION PROPOSAL MADE BY THE PREVAILING PARTY TO THE DISPUTE, EXCEPT AS EQUITY DEMANDS. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING ON ALL PARTIES, SUBJECT ONLY TO VACATION OR CORRECTION SOLELY ON THE BASES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1286.2 AND 1286.6. THE ARBITRATOR SHALL FIX HIS OR HER OWN COMPENSATION, UNLESS OTHERWISE AGREED ON, AND SHALL ASSESS THE COSTS AND CHARGES OF THE ARBITRATION ON EITHER OR BOTH PARTIES.

(III) THE ARBITRATION SHALL BE CONDUCTED IN SAN DIEGO COUNTY, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND THE DISPUTE SHALL BE RESOLVED THEREBY, NOT BY COURT ACTION (EXCEPT AS PROVIDED BY CALIFORNIA LAW FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS). ARBITRATION SHALL COMMENCE PROMPTLY AFTER THE ARBITRATORS HAVE BEEN SELECTED, AND IN ANY EVENT NOT LATER THAN THE SEVENTY FIFTH (75TH) DAY AFTER THE ARBITRATION NOTICE (OR SUCH EARLIER OR LATER DATE AS THE PARTIES MAY AGREE UPON), SHALL BE DILIGENTLY PURSUED AND EXPEDITIOUSLY CONCLUDED. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

(IV) IN THE EVENT THAT EQUITY DEMANDS THAT THE PROPOSED RESOLUTION OF THE PREVAILING PARTY AS SPECIFIED IN SUB-PARAGRAPH II ABOVE MUST BE REJECTED, THEN THE ARBITRATOR(S) SHALL BE AUTHORIZED TO IMPOSE ON THE PARTIES ANY REMEDIES AVAILABLE IN LAW OR EQUITY; EXCEPT, HOWEVER, THE ARBITRATORS SHALL NOT HAVE THE POWER TO AWARD PUNITIVE DAMAGES.

16.6 ATTORNEYS' FEES. In the event the Association, Declarant, or any Owner shall initiate any action or proceeding, including an arbitration pursuant to Section 16.5 (or, if permitted by the provisions of this Declaration or by agreement of the parties involved a reference pursuant to Section 638, et seq., of the Code of Civil Procedure) against any other party under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including the actual fees of its attorneys incurred for prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any action or proceeding shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

#### ARTICLE 17

#### GENERAL PROVISIONS

17.1 HEADINGS. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

17.2 SEVERABILITY. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions.

17.3 CUMULATIVE REMEDIES. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

17.4 VIOLATIONS AS NUISANCE. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

17.5 NO RACIAL RESTRICTION. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his Residential Unit on the basis of race, sex, color or creed.

17.6 ACCESS TO BOOKS. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

17.7 LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

17.8 NOTIFICATION OF SALE OF CONDOMINIUM. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by overnight courier or upon delivery if delivered personally to any occupant of a Condominium over the age of twelve (12) years.

17.9 NUMBER, GENDER. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

17.10 EXHIBITS. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

17.11 BINDING EFFECT. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

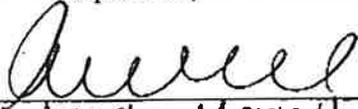
17.12 EASEMENTS RESERVED AND GRANTED. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

IN WITNESS WHEREOF, Declarant has executed this instrument as of 6-2-04,  
200\_

DECLARANT:

K. HOVNIANIAN AT ACQUA VISTA, LLC, a  
California limited liability company

By: K. Hovnanian Developments of California, Inc.,  
a California corporation, its Sole Manager

By:   
Name: Angela Merrill  
Title: Authorized Agent



EXHIBITS

Exhibit "A" ..... Legal Description of the Property

Exhibit "B" ..... Maintenance Responsibility Chart

Exhibit "C" ..... Percent of Variable Expenses

Supplement "1" ..... Notice of Land Servitudes



2440  
docs

Recording Requested by and  
when Recorded Mail to:

PETERS & FREEDMAN, L.L.P.  
191 Calle Magdalena, Suite 220  
Encinitas, California 92024  
Telephone: (760) 436-3441

THE ORIGINAL OF THIS DOCUMENT  
WAS RECORDED ON NOV 08, 2012  
DOCUMENT NUMBER 2012-0698912  
Ernest J. Dronenburg, Jr., COUNTY RECORDER  
SAN DIEGO COUNTY RECORDER'S OFFICE  
TIME: 9:26 AM

**FIRST AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**ACQUA VISTA**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**RECITALS**

- A. The Acqua Vista Homeowners Association is the association established to maintain, operate and manage the residential project known as Acqua Vista;
- B. A Declaration of Covenants, Conditions and Restrictions ("Declaration") was recorded on June 2, 2004, as Instrument No. 2004-0514145, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to same;
- C. The membership of the Association hereby approves this First Amendment to the Declaration as follows:

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ACQUA VISTA HOMEOWNERS ASSOCIATION**

- 1. **Article 8, Section 8.1 (MAINTENANCE OBLIGATIONS OF OWNERS) is amended to read as follows:**

Each Owner is responsible for the care and maintenance of those components of each Owner's Residential Unit and Exclusive Use Easement Area designated for maintenance by the Owner on the Maintenance Responsibility Chart. Notwithstanding the obligation of the individual Owners to clean, maintain, repair, and replace Utility Facilities exclusively servicing the Residential Units, certain ducting and ventilation systems, including, but not limited to the Eccoducts, would impose impractical or impossible maintenance responsibilities on the individual Owners. For the purpose of maintaining the integrity of the Common Area and/or Association Property, including, but not limited to slabs, foundations and other Common Area and/or Association Property components in which such ducting and ventilation systems are located, which systems exclusively service a Residential Unit, the Association will have access to affected portions of the Common Area, Association Property and Owner's Residential Unit to install, maintain, repair and replace such ducting and ventilation systems.

The Association shall have the right, but not the obligation, to permanently shift back to the Owners the maintenance of such ducting and ventilation systems that exclusively service the Residential Units if, in the future, such ducting and ventilation systems are repaired or replaced as to make maintenance, repair and replacement by the individual Owners reasonably practical and possible. The Association will have the right to implement this maintenance obligation by adopting an operating rule in accordance with *Civil Code* Section 1357,100, et.seq., or successor statute.

2. **Article 8, Section 8.2 (MAINTENANCE OBLIGATIONS OF ASSOCIATION) is amended to read as follows:**

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 in accordance with the Maintenance Obligations. The Association shall keep such portions of the Project in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas. The Association shall also be responsible for maintaining any Improvements that a majority of the Voting Power of the Association designates for maintenance by the Association. All costs of maintenance, repairs and replacement for the Property shall be paid for as Common Expenses as provided in this Declaration. For the purpose of maintaining the integrity of the Common Area and/or Association Property, including, but not limited to slabs, foundations and other Common Area and/or Association Property components in which such ducting and ventilation systems are located, which systems exclusively service a Residential Unit, the Association will have access to affected portions of the Common Area, Association Property and Owner's Residential Unit to install, maintain, repair and replace such ducting and ventilation systems.

The Association shall have the right, but not the obligation, to permanently shift back to the Owners the maintenance of such ducting and ventilation systems that exclusively service the Residential Units if, in the future, such ducting and ventilation systems are repaired or replaced as to make maintenance, repair and replacement by the individual Owners reasonably practical and possible. The Association will have the right to implement this maintenance obligation by adopting an operating rule in accordance with *Civil Code* Section 1357,100, et.seq., or successor statute.

3. **Exhibit "B," Maintenance Responsibility Chart (page 1) is amended to add the following maintenance responsibility:**

	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
To the extent required by First Amendment to CC&Rs, Article 8, Sections 8.1 and 8.2, ducting and ventilation systems, including, but not limited to Ecoducts, exclusively servicing a Residential Unit and located or embedded within or interconnected with Common Area or Association Property, unless/until maintenance of such ducting and ventilation systems can be reasonably performed by the Owners.	A	A	A	A	A	A	A

4. All other provisions of the Declaration of Covenants, Conditions and Restrictions shall remain in full force and effect.

**CERTIFICATE OF AMENDMENT**

I, the undersigned, declare:

1. I am the duly elected and acting Secretary of the ACQUA VISTA HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ACQUA VISTA, comprising two (2) pages, was duly adopted by a vote of at least sixty-seven (67%) of the voting power of the Association.

3. That there are no Eligible Holders on Condominiums within the Project;

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 6<sup>th</sup> day of November, 2012.

ACQUA VISTA HOMEOWNERS ASSOCIATION

By: *Theлма Jean Wiebusch*  
Theлма Jean wiebusch, Secretary

State of California )  
 )ss  
County of San Diego )

On November 6, 2012 before me *Stacey Jones* a Notary Public, personally appeared *Theлма Jean Wiebusch* 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 *Stacey Jones*





**EXHIBIT "A"**

**Legal Description of the Acqua Vista Property**

Parcel 1 of Parcel Map No. 19501, in the City of San Diego, County of San Diego, State of California, filed in the office of the County Recorder of San Diego County, June 2, 2004, as Document No. 2004-0514145.

G:\24\2440\TFL\Docs\First Amend CC&Rs [Final].wpd

7P  
ICYP

DOC# 2017-0203188



Recording Requested by and  
when Recorded Mail to:

PETERS & FREEDMAN, L.L.P.  
191 Calle Magdalena, Suite 220  
Encinitas, California 92024  
Telephone: (760) 436-3441

May 05, 2017 12:45 PM  
OFFICIAL RECORDS  
Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$33.00

PAGES: 7

(Above Space for Recorder's Use)

**SECOND AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**ACQUA VISTA**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

## RECITALS

- A. The Acqua Vista Homeowners Association is the association established to maintain, operate and manage the residential project known as Acqua Vista;
- B. A Declaration of Covenants, Conditions and Restrictions ("Declaration") was recorded on June 2, 2004, as Instrument No. 2004-0514145, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to same;
- C. A First Amendment to Declaration of Covenants, Conditions and Restrictions (First Amendment") was recorded on November 8, 2012, as Document No. 2012-0698912, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to same;
- D. The membership of the Association hereby approves this Second Amendment to the Declaration of Covenants, Conditions and Restrictions as follows:

## SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ACQUA VISTA

- 
- 1. **Article 7, Section 7.32 (Prohibition Against Smoking) is added as a new section to Article 7, to read as follows:**

**Section 7.32 NO SMOKING IN THE PROJECT.** Smoking is prohibited everywhere within the Project, including, but not limited to: (1) Residential Units; (2) Exclusive Use Common Areas or Easement Areas, including but not limited to, Exclusive Use Courtyard Areas, Exclusive Use Deck Areas, and Exclusive Use Patio Areas; (3) Association Property, and (4) Common Areas, whether indoor or outdoor. No Owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, licensee, guest, friend, or family member, anywhere on the Project. For purposes hereof, smoking shall include the inhaling, exhaling, breathing, carrying, or possessing of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lit product whether or not containing tobacco.

(A) While this restriction is intended to render the Project (except to the extent provided in the immediately preceding paragraph) smoke-free, the Board is not a guarantor of a smoke-free environment hereunder. The Board shall have the right, but not the obligation, to enforce this restriction if the Board determines, in its sole discretion, that it is appropriate to do so in any individual case or circumstance. If the Board determines to take any such action, then in addition to

its other rights and remedies under the Governing Documents, at law, and in equity, the Board shall be entitled to recover its costs and expenses, including all attorneys' fees and court costs, incurred in enforcing this restriction.

(B) If the Board determines, in its sole discretion and for any reason, not to pursue enforcement of this restriction in any individual case or circumstance, any Owner may bring his or her own separate action to enforce this restriction against any other Owner who violates (or whose occupant, agent, tenant, invitee, licensee, guest, friend, or family member) violates this provision. If an Owner who brings such an action succeeds in establishing that the other Owner has violated this restriction, the Owner bringing such action shall be entitled to recover his or her costs and expenses, including reasonable attorneys' fees and court costs, incurred in such action from the other Owner.

(C) Grandfathering Provision. Notwithstanding the foregoing, any resident of a Residential Unit who is a smoker at the time of the recording of this Second Amendment shall be temporarily exempt from enforcement of this smoking restriction in the Unit for a six (6) month period. In order to qualify for this six (6) month temporary exemption, the Residential Unit Owner of such Condominium executes and delivers to the Board a notice identifying each smoker then residing in the Residential Unit, and such notice is delivered to the Board no later than thirty (30) days after the recording of this Declaration. Such a resident is referred to hereafter as a "Grandfathered Resident." Any temporary exemption of a Grandfathered Resident hereunder shall apply only to smoking within the Residential Unit, and shall be subject to the following conditions:

(1) The temporary exemption shall apply only to smoking inside the Residential Unit, and the Grandfathered Resident shall be subject to all other provisions of this smoking restriction at all times with respect to any area outside the Residential Unit, including any Exclusive Use Common Area, including, but not limited to, Exclusive Use Courtyard Areas, Exclusive Use Deck Areas, and Exclusive Use Patio Areas; and

(2) The temporary exemption shall terminate when the Grandfathered Resident vacates, or no longer resides in, the Residential Unit; and

(3) The Board shall have the sole discretion to terminate the partial and temporary exemption of a Grandfathered Resident upon the occurrence of the Grandfathered Resident or Residential Unit Owner of such Unit violating any condition contained in this Grandfathering provision, violating any other provisions of this smoking restriction, or violating any written condition, rule, or regulation adopted by the Board applicable to the Grandfathered Resident.

Notwithstanding the foregoing, this Grandfathering Provision shall not exceed six (6) months from recordation of the Second Amendment, and the temporary exemption applicable to Grandfathered Residents shall automatically terminate.

(D) Any Owner who leases and/or sells his or her Condominium shall specifically disclose to prospective tenants, purchasers and real estate agents that smoking is prohibited everywhere within the Project, including within the areas set forth in the first paragraph of this Section 7.32.

2. **Except as amended by the First Amendment and Second Amendment, the remaining portions of the Declaration of Covenants, Conditions and Restrictions shall remain in full force and effect.**

CERTIFICATE OF AMENDMENT

I, the undersigned, do hereby certify:

1. I am the duly elected and acting Secretary of ACQUA VISTA HOMEOWNERS ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation;

2. The foregoing SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ACQUA VISTA, comprising 3 pages plus exhibits, was duly adopted by a vote of at least sixty-seven percent (67%) of the voting power of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 2<sup>ND</sup> day of MAY, 2017.

ACQUA VISTA HOMEOWNERS  
ASSOCIATION

By: [Signature]  
Matt W. McCaigue, Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California    )  
  )  
County of San Diego    )

On May 2 2017, before me Stacey Jones a Notary Public, personally appeared Matt W. McCaigue 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]  
NOTARY PUBLIC



[SEAL]

**CERTIFICATE OF AMENDMENT**

I, the undersigned, do hereby certify:

1. I am the duly elected and acting President of ACQUA VISTA HOMEOWNERS ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation;

2. The foregoing SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ACQUA VISTA, comprising 3 pages plus exhibits, was duly adopted by a vote of at least sixty-seven percent (67%) of the voting power of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 2<sup>ND</sup> day of MAY, 2017.

ACQUA VISTA HOMEOWNERS  
ASSOCIATION

By:   
Esa Harvela, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California    )  
  )  
County of San Diego    )

On May 2, 2017, before me Stacey Jones a Notary Public, personally appeared Esa Harvela who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she 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.  
  
NOTARY PUBLIC



[SEAL]

**EXHIBIT "A"**

**Legal Description of the Acqua Vista Property**

Parcel 1 of Parcel Map No. 19501, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, on June 2, 2004, as Document No. 2004-0514145.

X  
7p

PLEASE COMPLETE THIS INFORMATION.  
RECORDING REQUESTED BY:  
Acqua Vista Homeowners Association

AND WHEN RECORDED MAIL TO:  
Jeffrey A. French, Esq.  
Green, Bryant & French, LLP  
402 West Broadway, Suite 1950  
San Diego, CA 92101

DOC# 2021-0002279



Jan 04, 2021 01:59 PM  
OFFICIAL RECORDS  
Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$107.00 (SB2 Atkins: \$75.00)

PAGES: 7

THIS SPACE FOR RECORDER'S USE ONLY

**Third Amendment**

(Please fill in document title(s) on this line)

**TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ACQUA VISTA HOMEOWNERS ASSOCIATION**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Additional recording fee applies)

**RECITALS**

- A. The Acqua Vista Homeowners Association is the Association established to maintain, operate, and manage the residential project known as Acqua Vista;
- B. A Declaration of Covenants, Conditions and Restrictions (“Declaration”) was recorded on June 2, 2004 as instrument No. 2004-0514145, in the Office of the County Recorder of the County of San Diego, making the property legally described as Exhibit “A” hereto subject to same;
- C. A First Amendment to the Declaration (“First Amendment”) was recorded on November 8, 2012 as document No. 2012-0698912, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit “A” hereto subject to same;
- D. A Second Amendment to the Declaration (“Second Amendment”) was recorded on May 5, 2017, as Document No. 2017-0203188, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit “A” hereto subject to same;
- E. California Assembly Bill 3182 (“AB 3182”) and new Civil Code section 4741 require that the Association amend their Declaration to conform to the requirements of Civil Code section 4741;
- F. As such, this Third Amendment to the Declaration is being adopted by the Board and recorded to conform the Declaration to AB 3182 and new Civil Code section 4741.

**THIRD AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ACQUA VISTA HOMEOWNERS ASSOCIATION**

- 
1. Article 7 § 7.17 entitled “**RENTAL OF RESIDENTIAL UNITS**” is amended as follows:

7.17 **RENTAL OF RESIDENTIAL UNITS.** An Owner shall be entitled to rent the Owner's Residential Unit subject to the restrictions contained in this Declaration. Any rental or leasing agreement shall (i) be for a period not less than thirty (30) days; (ii) be in writing, (iii) provide that the lease or rental is subject to the Governing Documents, and (iv) provide that any failure to comply with any provision of this Declaration or the Governing Documents shall be a default under the terms of the lease agreement. A copy of this Declaration and a copy of the Seller's Disclosure Statement provided to Owners by Declarant, shall be made available to each tenant or lessee by the Owner so renting or leasing. Each Owner is responsible to obtain and deliver to the Association, a signed statement from

such tenant or lessee, acknowledging that the tenant or lessee has received and reviewed such Seller's Disclosure Statement. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Residential Unit. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease a Residential Unit for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. All Owners who rent their Residential Units shall submit names and contact numbers for their tenants to the management company for the Project.

**2. Article 7 § 7.18 entitled "TIME SHARING" is amended as follows:**

7.18 TIME SHARING. A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods other than pursuant to a written lease as permitted pursuant to Section 7.17 above. The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Residential Unit or Residential Units or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time thirty (30) consecutive calendar days or less.

CERTIFICATE OF AMENDMENT

We, the undersigned, do hereby certify:

1. That each of us is an Officer of Acqua Vista Homeowners Association, Inc. a California non-profit mutual benefit corporation; and
2. The Third Amendment to the Declaration was approved for recording by the Association's Board of Directors as a mandatory amendment pursuant to California Assembly Bill 3182 and new Civil Code § 4741.

In Witness Whereof I sign my name this 24 day of NOVEMBER, 2020.

Acqua Vista Homeowners Association

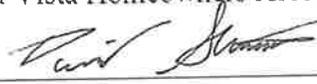
By: 

Print Name: DANIEL TORRES

Title: President

In Witness Whereof I sign my name this 4 day of December, 2020.

Acqua Vista Homeowners Association

By: 

Print Name: Daniel Shirkey

Title: ~~Secretary~~ Vice President

Notary Public Darius Johnson Talley  
Today's date 12/04/2020  
See Attached for Notary Seal

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California ) ss.

County of San Diego )

On Nov. 24, 2020, before me, L. Gleeson Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Daniel Torres
Name(s) of Signer(s)

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 [Handwritten Signature]
Signature of Notary Public

Notary Seal

Description of Attached Document:
Type of Document: Certificate of Amendment
Document Date: 11/24/2020



**EXHIBIT “2”**

AMENDED AND RESTATED BYLAWS  
OF  
ACQUA VISTA HOMEOWNERS ASSOCIATION  
(2020)

No deadline as to when a candidate must  
submit their candidacy.

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AMENDED AND RESTATED BYLAWS OF  
ACQUA VISTA HOMEOWNERS ASSOCIATION  
A California Nonprofit Mutual Benefit Corporation

ARTICLE 1  
NAME AND LOCATION

1.1 Name and Principal Office. The name of the association is Acqua Vista Homeowners Association, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Association"). The Association is organized under the California Nonprofit Mutual Benefit Corporation Law.

ARTICLE 2  
DEFINITIONS

2.1 Declaration. The "Declaration" shall mean, collectively, the Declaration of Covenants, Conditions and Restrictions of Acqua Vista recorded in the Office of the County Recorder of San Diego, California, on June 2, 2004, as File No. 2004-0514145, and any amendments or supplements recorded or to be recorded pursuant thereto, for the real property legally described in the Declaration.

2.2 Other Definitions. Each and every definition set forth in Article 2 of the Declaration shall have the same meaning in these Bylaws and each and every such definition is incorporated by reference herein and made a part hereof.

ARTICLE 3  
PRINCIPAL OFFICE

3.1 Principal Office. The principal office for the transaction of the business of the Association is hereby fixed and located within the Project or as close as practicable thereto, in the City of San Diego, County of San Diego, State of California. The Board is hereby granted full power and authority to change said principal office from one location to another within the City of San Diego.

ARTICLE 4  
MEMBERS

4.1 Membership; Voting Rights. Membership in the Association is based upon ownership of a Condominium within the Development as reflected in the records of the County Recorder's Office for San Diego County. There shall only be one class of membership for the Association. Notwithstanding anything to the contrary, the Association shall not deny a ballot, or suspend a member's right to vote, for any reason other than not being a member at the time when ballots are distributed. In addition, the Association shall not deny a ballot to a person with general power of attorney for a member, and such person voting under a general power of attorney shall

have his or her vote counted if returned in a timely basis as determined by the Board. The provisions of these Bylaws, which are binding upon all Members, are not exclusive, as Members shall also be subject to the terms and provisions of the Articles, the Declaration and the Association Rules. In accordance with Civil Code Section 5100 et seq., the Association shall adopt election rules, which shall not be amended less than 90 days before an election.

4.2 Membership Certificates and Proof of Membership. In its discretion, the Board may, but need not, issue appropriate membership certificates evidencing membership in the Association. The Association or any Board member or officer shall be entitled to require that any Member provide to the Association, in a timely manner, a complete and true copy of any power of attorney or other written authority appointing or designating any third party to receive a ballot and/or cast a ballot on behalf of that Member. Such power of attorney or other written authority must be signed by the Member or, if the Member is a legal entity who is not a natural person, by an officer or other person ostensibly authorized by the legal entity member to make such appointment or designation.

4.3 Place of Meeting. All meetings of Members shall be held at the principal office of the Association, or at such other place in the City of San Diego, County of San Diego, in reasonable proximity to the Project, as may be fixed from time to time by resolution of the Board.

4.4 Organizational Meeting. An organizational meeting shall be held as soon as practicable after a director election, and the directors elected then shall hold office until their successor is elected. All offices of the Board shall be filled at the organizational meeting.

4.5 Regular Meetings of Members and Notice. Regular meetings of Members of the Association shall be held at least once in each calendar year at a time and place within the Project as prescribed in these Bylaws or as selected by the Board. Any Mortgagee, through its designated representative, shall be entitled to attend any such meeting but except as provided in the Section of the Declaration entitled "Voting Rights on Default," shall not be entitled to vote at the meeting.

4.6 Special Meetings. A special meeting of Members for any purpose may be called at any time by the President, either in his or her discretion, as directed by resolution of a majority of a quorum of the Board, or upon a written request specifying the general nature of the business to be transacted being presented to the Secretary signed by Members representing at least five percent (5%) of the total Voting Power of the Members. Upon receipt of such written request, the Secretary shall promptly cause the notice to be given to the Members entitled to vote in the same manner as required by Section 4.7, which meeting shall be held not less than thirty-five (35) days nor more than ninety (90) days after adoption of such resolution or receipt of such request. The notice of any special meeting shall be given within twenty (20) days after adoption of such resolution or receipt of such written request. If notice is not given within twenty (20) days after receipt of the request, the Members requesting the meeting may give notice. No business shall be transacted at a special meeting other than business the general matter of which is disclosed in the notice. Each First Mortgagee may designate a representative to attend all special meetings of the Members.

4.7 Notice of Meetings. A written notice of all Members' meetings, regular or special, shall be given by the Board to each Member entitled to vote and to any Mortgagee who has requested in writing that such notice be sent to it, either personally or by first-class, registered or certified mail, or other means of written communication (other than mail) addressed to a Member at the address of the Member appearing on the books of the Association or given by Member to the Association for notice purposes, or if no such address appears or is given, at the place where the principal office of the Association is located, or by publication at least once in a newspaper of general circulation in the county in which the principal office of the Association is located. The notice of a meeting shall set forth the place, date and time of the meeting, and the general nature of the business to be undertaken, including any matters the Board intends to present for action by the Members; provided, however, that except as otherwise provided by law or under these Bylaws, any proper matter may be presented at the meeting for action. The Members' meetings, regular or special, shall be held not less than ten (10) days nor more than thirty (30) days after notice of such meeting is given to the Members.

4.8 Record Date and Closing Membership Register. The Board may fix, in advance, a date as the record date for determining which Members are entitled to notice of a meeting of Members. Such "notice" record date shall be not more than ninety (90) nor less than ten (10) days before the date of the meeting. If no "notice" record date is fixed, the record date for notice is the close of business on the business day preceding the day on which notice is given. The Board may fix, in advance, a date as the record date for determining which Members are entitled to vote at a meeting of Members. Such "voting" record date shall be not more than sixty (60) nor less than ten (10) days before the date of the meeting. If no "voting" record date is fixed, Members who are otherwise eligible to vote are entitled to vote at the meeting. The Board may fix, in advance, a date as the record date for determining which Members are entitled to cast written ballots. Such "written ballot" record date shall be not more than sixty (60) nor less than ten (10) days before the date on which the first written ballot is mailed or solicited. If no "written ballot" record date is fixed, Members on the day the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

4.9 Quorum. Except as otherwise provided in the Declaration, the presence at any meeting in person, or by ballot of Members entitled to cast at least twenty-five percent (25%) of the total Voting Power of all Members of the Association who are entitled to vote on the business to be transacted shall constitute a quorum. No business other than to adjourn the meeting can be conducted at a meeting of the Members unless a quorum is present. If any meeting cannot be held because a quorum is not present, Members representing a majority of the votes present, either in person or by ballot, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which adjourned meeting the quorum requirement shall be at least fifteen percent (15%) of said total Voting Power. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to the Members in the manner prescribed for annual meetings. Any meeting of Members where a quorum is present may be adjourned for any reason to a time not less than forty-eight (48)

hours nor more than thirty (30) days from the time of such meeting by Members representing a majority of the votes present thereat, either in person or by ballot; provided however, that the only matters that may be voted upon at any meeting attended, in person or by proxy, by less than one-third (1/3) of the total Voting Power of the Members are matters for which notice of the general nature of such matters was provided to the Members in the notice of the meeting.

4.10 Cumulative Voting & Director Elections. Voting for the governing body shall be by secret written ballot. Each Member shall be entitled to vote as many votes as such Member is entitled to exercise as provided in these Bylaws multiplied by the number of directors to be elected or removed. In all elections, a member is entitled to appoint an attorney in fact under a general power of attorney to vote on behalf of that member. If such an attorney in fact is appointed by a member, the attorney in fact will be entitled to receive a ballot in place of that member, and any vote cast by that attorney in fact will be counted if returned in a timely manner and such vote is otherwise valid. A member who is not a natural person but is instead a legal entity such as a corporation or LLC is entitled to designate a natural person to receive a ballot and to have that natural person cast a vote by ballot on the member's behalf. The candidates receiving the highest number of votes up to the number of directors to be elected shall be deemed elected. Notwithstanding anything to the contrary, if the number of candidates for the Board is equal to or less than the number of open seats, the election may be held by acclamation such that the Members may vote via a motion at the meeting to accept the slate of candidates without the need for a ballot vote.

4.11 Proxies Prohibited. Proxy voting is prohibited in all Association elections.

4.12 Vote Appurtenant to Condominium. The right to vote may not be severed or separated from the ownership of the Condominium to which it is appurtenant. Any sale, transfer or conveyance of such Condominium to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner.

4.13 Parliamentary Procedure. The President of the Association or another person elected at a meeting shall preside over meetings of Members. All meetings of Members shall be generally conducted in accordance with a system of parliamentary procedure or any parliamentary procedures the Association may adopt.

4.14 Majority of Owners. Except as otherwise provided herein, in the Declaration, the Articles or the California Corporations Code, the majority of the total Voting Power present and voting, in person or by ballot, at a duly held meeting at which a quorum is present, shall prevail. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum if any action taken (other than adjournment) is approved by at least a majority of the total Voting Power required to constitute a quorum.

4.15 Action Without Meeting. Unless otherwise prohibited herein, in the Declaration, the Articles or the California Corporations Code, any action which may be taken at a meeting of the Members, except the election of directors where cumulative voting is a requirement, may

be taken without a meeting if authorized by a writing signed by all of the Members who would be entitled to vote at a meeting for such purpose and filed with the minutes of the proceeding of the Members or, in certain circumstances, by written ballot without a meeting, as set forth in Section 4.5 of the Declaration.

4.16 Consent of Absentees. The transactions of any meeting of the Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by ballot, and if, either before or after the meeting, each of the persons entitled to vote not present either in person or by ballot, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the Association's records or made a part of the minutes of the meeting.

4.17 Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice was properly given shall be prima facie evidence that such notice was given.

## ARTICLE 5 DIRECTORS

5.1 Powers. The Board shall have all powers conferred upon the Association as set forth herein and in the Declaration and the Articles, excepting only those powers expressly reserved to the Members.

5.2 Duties. In addition to those duties of the Board required by law, it shall be the duty of the Board:

- (a) to select, appoint and remove all officers, agents and employees of the Association and prescribe such powers and duties to them as may be consistent with applicable law, the Articles, the Declaration and these Bylaws;
- (b) to supervise all officers, agents and employees of the Association, and to see that their duties are properly performed; and
- (c) to perform all obligations of the Association as provided in the Declaration and these Bylaws.

5.3 Number and Qualifications. The Board shall consist of five (5) directors who shall be Members or representatives of Declarant. In order for a person to be eligible for nomination and election to the Board (and to serve on the Board) such person must meet the following qualifications:

- (a) Not be delinquent in the payment of regular or special assessments;

- (b) Not serve, or run for election as a Director if, on election, another owner of the same separate interest would be serving on the Board concurrently. Such Director Qualification includes not being a candidate when another owner of the same separate interest has already been accepted for nomination as a candidate;
- (c) Have been an owner of a separate interest in the project for at least one year as measured from the date that the request for candidate nominations is sent out; and
- (d) Not have a criminal conviction that would, if the candidate were elected, prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 or result in the termination of the Association's existing fidelity bond coverage.

In the absence of compliance with these provisions, all votes for such candidate shall not be counted or, if counted in error or otherwise, shall be deemed to be null and void.

5.3.1 Board Code of Conduct. The Board may adopt a Board Code of Conduct or other similar document at any time and compliance with such document shall be a further qualification for any elected or appointed Director to remain on the Board. Upon election or appointment to the Board, each director shall sign the adopted Board Code of Conduct and agree to abide by it at all times while serving as a director.

5.3.2 Additional Director Qualifications. In addition to any provisions contained in the Election Rules or these Bylaws as to Director Qualifications, the Board, by a majority vote of the Directors who meet all of the required qualifications relating to serving directors, may declare vacant the office of any Director if the Director:

- (i) Fails to attend three (3) consecutive regularly scheduled meetings of the Board or fails to attend more than six (6) meetings of the Board, regular or special, within any consecutive twelve (12) month period;
- (ii) Fails to comply with a duly approved action or direction of the Board which the Board reasonably considers should have been complied with by the Director while serving in the capacity of a Director;
- (iii) Fails to comply with the Association's Governing Documents, including but not limited to the payment of regular and/or special assessments or other money owed or due to the Association (apart from the payment of fines, collection charges, late charges or costs levied by a third party) provided that removal for the non-payment of regular and/or special assessments shall be mandatory if, under the Association's Election Rules or other

Governing Documents, a candidate for the Board would be disqualified if delinquent in the payment of regular and/or special assessments.

- (iv) Receives any type of monetary gain, or other gain such as services, products, gifts or gratuities of a significant value (in the opinion of the Board) which have been provided in relation to a Director's service on the Board, and which has not been promptly disclosed to the Board at an open meeting of the Board, sanctioned by the Board and recorded in the minutes;
- (v) Takes any action considered (in the reasonable opinion of the Board) to be grossly detrimental to the general safety, health and welfare of the community and its members or which the Director knew, or should have known, would or might create significant legal liability to the Association or be substantially detrimental or adverse to the Association's financial or legal position;
- (vi) Addresses or acts toward fellow Directors, management personnel, Association vendors, members, residents or invitees within the community in such a manner that causes such person (and, in the opinion of the Board, would have a probability of causing a reasonable person), to feel distress, threatened, intimidated, grossly disrespected or to suffer emotional harm.

5.4 Nomination. Each Member of the Association shall have a right of self-nomination to the Board provided that they meet the necessary qualifications. Nomination for election to the Board may also be made by a nominating committee consisting of three (3) persons. Nominations may also be made from the floor at each annual meeting. The nominating committee shall consist of a chairperson, who shall be a director, and two (2) other persons who may either be Members of the Association or representatives of Declarant. Each member of the nominating committee shall be appointed by the Board to serve for a period of one (1) year, and vacancies thereon shall be filled by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but not less than the number of vacancies to be filled.

5.5 Election and Term of Office. The candidates receiving the highest number of votes shall be deemed elected. The term of office of the directors shall be two (2) years and elections shall be held on a staggered basis as provided for below. After expiration of the initial terms, all terms shall be for a term of two (2) years. Successor directors shall be elected at the next annual meeting corresponding with the expiration of the terms. All directors shall hold office until their respective successors are elected. Except as otherwise provided in the Declaration and these Bylaws, elections to the Board shall be in accordance with the provisions of the California Corporations Code and the election rules adopted pursuant to Civil Code section 5100 et seq.

5.6 Removal. At any regular or special meeting of the Members of which notice has

been given properly as provided in these Bylaws, the entire Board or any individual director may be removed from office as hereinafter set forth, provided that the same notice of said meeting has also been given to said entire Board or any individual director whose removal is to be considered at said special meeting. Quorum for any such Member meeting shall be fifty percent (50%) of the total voting power and the quorum shall be the same for any reconvened recall meeting. The entire Board or any individual director may be removed from office by a majority of the affirmative votes cast in the voting on any motion or resolution for removal. However, unless the entire Board is removed, an individual director shall not be removed prior to the expiration of such director's term of office if the number of votes cast against the motion or resolution for such director's removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of the directors were then being elected; provided, however, if a special meeting is called to remove a director elected by Declarant, then until Declarant no longer owns any interest in the Project, no such director shall be removed without the consent of Declarant. Upon any such motion or resolution for removal, every Member may cumulate his or her vote or votes, as the case may be, in the same manner as provided herein for the election of directors. In the event that any or all directors are so removed, new directors shall be elected at the same meeting.

#### 5.7 Vacancies.

5.7.1 Generally. Vacancies on the Board may be filled by a majority of the directors, though less than a quorum, and each director so elected shall hold office until such director's successor is elected at an annual meeting of Members, or at a special meeting called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any director, or in case the authorized number of directors is increased by an amendment to these Bylaws. If, when the Board increases the number of directors but fails to elect the additional directors as provided for at the meeting at which such increase is authorized, or at an adjournment thereof, or in case the Members fail, at any time, to elect the full number of the authorized directors, a vacancy or vacancies shall be deemed to exist. The Members may at any time elect directors to fill any vacancy not filled by the directors and may elect the additional directors at the meeting at which an amendment of these Bylaws is voted authorizing an increase in the number of directors.

5.8 Resignation. If any director tenders his or her resignation to the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of directors shall have the effect of removing any director from office prior to the expiration of his or her term of office.

5.9 Compensation. No director shall receive any compensation for any service such director may render to the Association as a director; provided, however, any director may be reimbursed for actual out-of-pocket expenses incurred by such director in the performance of his or her duties. The Board shall also have the right to hire any consultants as may be deemed necessary and to compensate such consultants; provided that such consultant has no financial interest in any individual Board member.

5.10 Organizational Meeting of the Directors. Immediately following the election of directors or as soon as reasonably possible thereafter, the Board shall hold a regular meeting for the purpose of organization, appointment of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

5.11 Other Regular Meetings. Other regular meetings of the Board shall be held when business warrants such a meeting as determined by the Board, but not less than every **two (2)** months at such place and hour as may be fixed from time to time by resolution of the Board. The Board shall select a meeting place. Should any such meeting fall upon a legal holiday, then that meeting shall be held as soon as possible thereafter. Notice of the time and place of any such meeting shall be communicated to Board members not less than four (4) days prior to the meeting; provided, however, that notice of a meeting need not be given to any Board member who has signed a waiver of notice or a written consent to holding of the meeting and notice of regular meetings need not be given if the time and the place of the regular meetings are fixed by the Board.

5.12 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President of the Association, by any two (2) directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered and the time and place of the meeting, which shall not be less than four (4) days from the date of such notice if given by first class mail or forty-eight (48) hours from the date of such notice if the notice is given by any other method set forth below; provided, however, that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall be given by first class mail, personal delivery or overnight courier, telephone (including a voice message system or other system of technology designed to record and communicate messages, facsimiles, electronic mail or other electronic means to all directors at the address, telephone or facsimile number or electronic mail address appearing on the books of the Association as given by the director for purpose of notice.

5.13 Emergency Meetings. An emergency meeting of the Board may be called by the President, Vice President or the Secretary of the Association, or by any two (2) members of the Board other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice to Members as required in Section 5.19 of these Bylaws. The notice for such emergency meeting shall be given to the directors by personal delivery, telephone (including a voice message system or other system with technology designed to record and communicate messages), facsimiles, electronic mail or other electronic means at any time prior to the emergency meeting.

5.14 Presiding Officer. The President of the Association shall be the chairperson of the Board and shall preside at all meetings of the Board.

5.15 Waiver of Notice. The transaction of any business at any meeting of the Board, however called and noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Association or made a part of the minutes of the meeting. Notice of meeting shall also be deemed to be given to any director who attends the meeting without protesting before or at its commencement about the lack of notice.

5.16 Quorum. A majority of the total number of directors shall constitute a quorum for the transaction of business at a meeting of the Board. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. Directors may participate in a meeting through use of a conference telephone or similar communications equipment, so long as all directors participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting.

5.17 Adjournment. A quorum of the directors may adjourn any Board meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at any Board meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

5.18 Notice of Board Meetings to Members; Participation by Members; Executive Sessions. The Secretary shall post a notice of the time and place of all regular and special Board meetings in a conspicuous place within the Common Area or Association Property, or by mail or delivery of the notice to each Residential Unit, or by newsletter or similar means of communication, except for an emergency meeting described in Section 5.14 above, not less than four (4) days prior to the scheduled time of the meeting. For a Board meeting that will be only held in executive session, the Association need only give two (2) days' notice. Regular, special and emergency meetings of the Board (excluding any meetings while the Board is in executive session) shall be open to all Members of the Association; provided, however, that Members who are not on the Board shall be permitted to speak at Board meetings subject to such reasonable time limits as may be set by the Board. In addition, if the nature of the business is first announced in open session, the Board may vote to adjourn and reconvene in executive session out of the presence of the Members to discuss and vote upon litigation matters, matters that relate to the formation of contracts with third parties, personnel matters, and orders of business of a similar or otherwise sensitive nature. In any matter relating to the discipline of a Member or the Member's payment of assessments, the Board shall meet in executive session with respect to such matter if requested by that Member, and the Member shall be entitled to attend the executive session. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following Board meeting that is open to the entire membership. If the Board meets to decide upon the adoption, change or amendment of an Operating Rule, the Board shall comply with the requirements of Civil Code Sections 4340-4365.

5.19 Board Minutes. The minutes, minutes proposed for adoption that are marked to

indicate draft status, or a summary of the minutes of any meeting of the Board, other than an executive session, shall be available to Members within thirty (30) days of the applicable meeting of the Board. The minutes, proposed minutes, or summary of the minutes shall be distributed to any Member upon request and upon reimbursement of the Association's cost for making that distribution. Further, the Members shall be notified in writing at the time that the pro-forma operating budget of the Association set forth in Section 9.2 of these Bylaws is distributed, or at the time of any general mailing to the entire membership of the Association, of their right to have copies of the minutes of meetings of the Board, and how and when those minutes may be obtained. As used in this Section, "meeting" includes any congregation of the majority of the members of the Board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in the executive session.

5.20 Action Taken Without a Meeting. Notwithstanding anything to the contrary contained in these Bylaws, the directors shall have the right to take any action deemed by the Board to be an emergency or as otherwise provided by Civil Code section 4910 in the absence of a meeting which they could take at a meeting by obtaining the written consent of all the directors. Such written consent shall be filed with the minutes of the proceedings of the Board. Any action so approved shall have the same effect as though taken at a meeting of the Board.

5.21 Committees. Subject to any contrary provisions of the Declaration, the Articles and these Bylaws, if any, the Board may appoint a nominating committee as provided in this Article. In addition, the Board may appoint such other committees as it deems appropriate in order to carry out its purpose.

## ARTICLE 6 OFFICERS

6.1 Enumeration of Officers. The officers of the Association shall be a President and Vice President, both of whom shall at all times be directors, a Chief Financial Officer and a Secretary and such other officers as the Board may create from time to time by resolution. Officers other than the President and Vice President may, but need not, be directors.

6.2 Appointment; Term. The appointment of officers shall take place at the organizational meeting of the Board and thereafter at each meeting of the Board following each annual meeting of the Members. The officers of the Association, except such officers as may be appointed in accordance with Section 6.3 below, shall be appointed annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, or shall be removed, or shall otherwise be or become disqualified to serve.

6.3 Special Appointments. The Board may appoint such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

6.4 Resignation and Removal. Any officer may be removed from office with or without cause by the vote of a majority of all directors then in office at any regular or special meeting of the Board at which a quorum is present. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.5 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to fill such vacancy shall serve for the remainder of the term of the officer he or she replaces.

6.6 Multiple Offices. Any two (2) or more offices except those of President and Secretary, may be held by the same person.

6.7 Duties. The duties of the officers shall be as follows:

6.7.1 President. The President shall be the chief executive of the Association and shall have, subject to the control of the Board and the provisions of the Declaration, general supervision, direction and control of the business and officers of the Association. The President shall be an ex-officio member of all standing committees, if any, and shall have the general powers and duties of management usually vested in the office of the president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws. The President shall see that orders and resolutions of the Board are carried out.

6.7.2 Vice President. The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and when so acting, shall have all of the powers of, and be subject to all the restrictions upon, the office of President. The Vice President shall have such other powers and shall perform such other duties as may be prescribed by the Board or these Bylaws.

6.7.3 Secretary. The Secretary shall record the votes and keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order, of all meetings and proceedings of the Board and of the Members, with the time and place of the holding of same, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present or represented at Members' meetings and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office, a membership register showing the following: (a) the names and addresses of all directors; (b) the names and addresses of the Members; (c) the property to which each membership relates; (d) the number of memberships held by each Member; (e) the number of votes represented by each Member; (f) the number and date of membership certificates issued, if any; and (g) the number and date of cancellation of membership certificates, if any. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board required by these Bylaws or by law to be given, and shall keep the seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

6.7.4 Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association. The books of account shall, at all reasonable times, be open to inspection by any director or by any Member. The Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

6.8 Withdrawal of Funds from Reserve Account. Withdrawal of funds from the Association's reserve account in excess of the sum of Two Hundred Dollars (\$200) shall require the signatures of either:

- (a) two (2) directors; or
- (b) two (2) directors and an officer of the Association who is not also a director.

6.9 Compensation. No officer shall receive any compensation for any service such officer may render to the Association as an officer; provided, however, any officer may be reimbursed for actual out-of-pocket expenses incurred by such officer in the performance of his or her duties.

## ARTICLE 7 INDEMNIFICATION

7.1 Generally. A director, officer, committee member, employee or other "agent" of the Association who was or is a party to or is threatened to be made a party to any "proceeding" (including a proceeding by or on behalf of the Association) because he or she is or has been a director, officer, committee member, employee or "agent" of the Association shall be indemnified, defended and held harmless by the Association against all expenses, judgments, fines, settlements or other amounts actually and reasonably incurred in connection with the "proceeding," action or suit to the maximum extent permitted by applicable law, including pursuant to the provisions of California Civil Code Section 5800. Terms used in this Article shall have the same meaning as in Section 7237 of the California Corporations Code or any successor statutes or laws.

7.2 Approval. Upon written request to the Board by any person seeking indemnification, the Board shall promptly determine whether the applicable standard of conduct for indemnification set forth in the California Nonprofit Mutual Benefit Corporation Law has been met. If so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the "proceeding" with

respect to which indemnification is sought prevent a quorum of directors who are not parties to the "proceeding," the Board shall promptly call a special meeting of Members. At the meeting, the Members shall determine whether the applicable standard of conduct for indemnification set forth in the California Nonprofit Mutual Benefit Corporation Law has been met. If so, the Members shall authorize indemnification. Members or other persons seeking to be indemnified shall not be entitled to vote on any matters with respect to the authorization of indemnification.

7.3 Advancing Expenses. Except as otherwise determined by the Board in a specific instance, "expenses" incurred by a director, officer, committee member, employee or "agent" seeking indemnification under Section 7.1 shall be advanced by the Association prior to the final disposition of the proceeding upon receipt of a written undertaking by or on behalf of the director, officer, committee member, employee or "agent" to repay the amount unless it is ultimately determined that the person is entitled to be indemnified by the Association.

## ARTICLE 8 ASSESSMENTS

8.1 Liability for Assessments; Collection. As more fully provided in Article 6 of the Declaration, each Member is obliged to pay to the Association Regular Assessments, Special Assessments, Capital Improvement Assessments, Enforcement Assessments and Reconstruction Assessments to be collected as therein set forth, all of which are hereby incorporated by reference herein as if set forth in full.

## ARTICLE 9 ASSOCIATION'S ACCOUNTS

### 9.1 Books and Records.

9.1.1 Records Available. Any membership roster, including mailing addresses and e-mail addresses, if provided, books of account and minutes of meetings of the Members, the Board and committees of the Board of the Association (excluding any minutes of meetings while the Board is in executive session) and Operating Rules shall be made available for inspection and copying by any Member of the Association, or such Member's duly-appointed representative, or any Mortgagee, at any reasonable time and for a purpose reasonably related to his or her interest as a Member, at the office of the Association or at such other place within the Project as the Board prescribes. Upon request and payment of the fees prescribed under Section 9.1.2(c), regular minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of any minutes, other than minutes of executive session meetings, shall be made available to Members within thirty (30) days of any such meeting. Members shall have such additional access and inspection rights with respect to records of the Association as is provided in Civil Code sections 5200-5215

9.1.2 Rules Regarding Inspection. The Board shall establish by resolution reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records of the Association by the Member, representative or Mortgagee desiring to make an inspection;
- (b) Hours and days of the week when an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by a Member or by a representative or Mortgagee.

9.1.3 Rights of Directors. Provided that there are no conflict of interest issues, every director of the Association shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

9.2 Budget, Financial and Insurance Statements. The following financial information shall be regularly prepared by the Board of the Association:

9.2.1 Budgets. A pro-forma operating statement (budget) for each Fiscal Year consisting of at least the following information shall be distributed to all Members of the Association not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the Fiscal Year together with the following:

- (a) Estimated revenue and expenses on an accrual basis;
- (b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 9.3 of these Bylaws, which shall be printed in bold type and include the following:
  - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
  - (ii) As of the end of the Fiscal Year for which the study is prepared:
    - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components; and
    - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the major components;

- (iii) The percentage that the current amount of accumulated cash reserves determined for purposes of Section 9.2.1(b)(ii)(b) is of the current estimate of the amount of accumulated cash reserves determined for purposes of Section 9.2.1(b)(ii)(a);
- (c) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor; and
- (d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and Association Property and any other areas or Improvements within the Project for which the Association is responsible.

In lieu of the distribution of the pro-forma operating statement described above to all Members, the Board may elect to distribute a summary of such statement to the Members with a notice that the actual statement is available at the business office of the Association or another suitable location within the Project and that copies will be provided upon request of the Board, at the Association's expense. If any Member requests a copy of the pro-forma operating statement required to be distributed as provided above, the Association shall provide it to the Member by first-class United States mail at the Association's expense within five (5) days following a request therefor by the Member. The written notice that is distributed to each Member shall be in at least 10-point bold type on the front page of the summary of the pro-forma operating statement.

9.2.2 Review of Accounts. The Board shall do the following not less frequently than monthly:

- (a) Cause a current reconciliation of the Association's Maintenance and Operation Account to be made and review the same;
- (b) Cause a current reconciliation of the Association's Reserve Account to be made and review the same;
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

- (d) Review the most current account statements prepared by the financial institution where the Association has its Maintenance and Operation Account and Reserve Account: and
- (e) Review an income and expense statement for the Association's Maintenance and Operation Account and Reserve Account.

9.2.3 Annual Financial Review. An annual financial review shall be distributed to the Members of the Association within one hundred and twenty (120) days after the close of the Fiscal Year. The financial review shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

9.2.4 Association Policies. A statement setting forth the Association's policies and practices in enforcing the lien rights and other legal remedies for the default in the payment of Assessments against Members shall be distributed to the Members of the Association not later than thirty (30) days prior to the beginning of each Fiscal Year.

9.2.5 Schedule of Monetary Penalties. If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the governing documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for the discipline of Members contained in the Governing Documents. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Members as provided herein.

9.2.6 Insurance Summary. Not later than thirty (30) days prior to the beginning of the Association's Fiscal Year, the Board shall provide a statement setting forth the information regarding the Association's insurance policies as required by California Civil Code Section 1365, and any successor statutes or laws, including the following:

- (a) A summary of the property, general liability, fidelity, and earthquake and flood insurance policies to be carried by the Association pursuant to the Declaration that states all of the following:
  - (i) The name of the insurer;
  - (ii) The type of insurance;
  - (iii) The policy limits of the insurance; and
  - (iv) The insurance deductibles.
- (b) The Board shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies have lapsed, been canceled and are not immediately renewed, restored or replaced.

or if there is a significant change, such as a reduction in coverage in limits or an increase in the deductible, for any of the Association's insurance policies, if the Association receives any notice of nonrenewal of a policy described above, and there will be lapse in coverage, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

- (c) To the extent that the information to be disclosed pursuant to Section 9.2.7(a) is specified in the declaration page of the applicable insurance policy, the Board may meet the requirements of those provisions by making copies of that page and distributing it to the Members.
- (d) The summary of the Association's insurance policies distributed pursuant to Section 9.2.7(a) shall contain the statement required under California Civil Code Section 5300.

### 9.3 Reserves.

9.3.1 Transfer of Reserve Funds. As provided in Section 5510 of the Civil Code and any successor statutes or laws, the Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components for which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established (including any separate reserves maintained for any Special Benefit Areas). However, the Board may authorize a temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided that the Board has made a written finding describing the reasons why a transfer from reserves to operating funds is necessary and how and when the money will be repaid to the reserve fund. The Association must notify all members of the decision in the next mailing to all Members and of the availability of an accounting of these expenses. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interest of the Project, temporarily delay the restoration of these funds until the time the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section. Such Special Assessment is subject to the limitation imposed by California Civil Code Section 5605 and any successor statutes or laws or as provided in the Declaration. The Board may, at its discretion, extend the date the payment of the Special Assessment is due; provided that any such extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of any unpaid Special Assessment. In addition to the foregoing, when a decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation involving the repair, restoration, replacement

or maintenance of major components for which the Association has the obligation to repair, restore, replace or maintain and for which the reserve fund was established, the Association shall notify the Members of that decision and the next available mailing to all Members pursuant to California Corporations Code Section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to such litigation on at least a quarterly basis, which shall be made available for inspection by Members at the Association's office.

9.3.2 Reserve Study. At least once every three (3) years, the Board shall cause a study of the reserve account requirements for the Project to be conducted. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. Separate reserve studies shall be completed for any Special Benefit Areas. At a minimum, the study required by this Section shall include:

- (a) The identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (b) Identification of the probable remaining useful life of the components identified in Section 9.3.2(a) of these Bylaws as of the date of the study;
- (c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Section 9.3.2(a) during and at the end of its useful life; and
- (d) An estimate of the total annual contribution necessary to defray the costs to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

As used in this Section 9.3, "**reserve accounts**" means monies that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain. In addition, as used in this Section, "**reserve account requirements**" means the estimated funds which the Board has determined or required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain under the Declaration.

9.3.3 Visual Inspections. At least once every three (3) years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible

areas of the major components with respect to which the Association is required to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components identified in the reserve study described in Section 9.3.2 above is equal to or greater than one-half of the Association's gross budget exclusive of the reserve account for such three (3) year period.

9.4 Managing Agent's Handling of Association Fund. The Managing Agent, as set forth in the Articles of Incorporation for the Project shall handle any Association funds in compliance with Section 5380 of the California Civil Code as it may be amended or revised from time to time. In addition to the foregoing, all Association Funds relating to any Special Benefit Area or any Special Benefit Area Budget shall not be commingled with other Community Association Funds. At no time shall any Community Association Funds relating to any Special Benefit Area be used for general Association purposes.

9.5 Changes in Common Interest Development Act. The provisions set forth above in this Article 9 are intended to comply with the provisions of the Common Interest Development Act set forth at California Civil Code section 4000, ("CID Act") and any successor statutes or laws. Upon any changes to the CID Act relating to the Association's account, reporting requirements hereunder or any other changes affecting the terms and provisions of these Bylaws, the Board shall comply with the provisions of the CID Act and the Board shall have the right to attach to these Bylaws any changes required as a result of the changes to the CID Act without any vote of the Members.

#### ARTICLE 10 AMENDMENTS

10.1 Vote Required. These Bylaws may be amended only with:

- (a) A majority of the Voting Power of the Association.

#### ARTICLE 11 GENERAL PROVISIONS

11.1 Contracts, etc.; How Executed. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument permitted under the Declaration or these Bylaws in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

11.2 Inspection of Bylaws. The Association shall keep in its principal office for the transaction of business the original or a copy of these Bylaws, as amended, certified by the secretary, which shall be open to inspection by all of the Members at all reasonable times.

**EXHIBIT “3”**

**ACQUA VISTA HOMEOWNERS ASSOCIATION**  
A California Non-Profit Mutual Benefit Corporation

**ELECTION RULES**

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**1.0. Introduction.**

The Acqua Vista Homeowners Association ("Association"), by and through the Board of Directors (the "Board"), has adopted the following rules, policies, and procedures ("Election Rules") for conducting the Association's voting and election processes.

The following Election Rules apply to all matters of the Association that are subject to a membership voting requirement by secret ballot pursuant to Civil Code Section 5100 et. seq. This includes the election or removal of members of the Association's Board of Directors, amendments to certain of the Association's governing documents, assessment increases that exceed the authority of the Board of Directors, and the granting of exclusive use of common area property pursuant to Civil Code Section 4600.

These Election Rules do not contain all of the information that may apply to your rights and responsibilities in the matters that require you to vote. The Association's Bylaws contain additional provisions and should also be reviewed by you, along with these Election Rules, in order to ensure a better understanding of these matters. In addition, the Association's CC&Rs contain provisions as to membership rights and may contain other terms applicable to elections. Finally, there are statutory provisions which are applicable to association elections contained in the California Civil and Corporations Code.

These Election Rules are intended to fully comply with California law as Senate Bill 323 has been approved by the legislature and Governor and filed with the Secretary of State in October 2019 and as will be in force and effect as at January 1, 2020. Where these Election Rules are in conflict with the Bylaws or other Association governing documents, which have not been revised since October 2019, the provisions herein will almost certainly supersede any other governing document terms to the contrary.

**2.0. General Information.**

- 2.1. All persons who meet the qualifications set forth in Section 4.0 below are eligible to run for the Board of Directors.
- 2.2. No Association funds shall be expended for the purposes of campaigning in connection with any vote or election other than those funds specifically required to distribute required correspondences, notices, or forms that may contain the names of candidates or descriptions of issues being voted upon. Specifically excluded is the expenditure of association funds for the purposes of expressly advocating approval, election, or defeat of any matter or candidate.

- 2.3. The Association shall hold an election for a seat on the Board in accordance with the procedures set forth in these Election Rules. Such an election shall occur at the expiration of a directors' term or terms and at least once per year or two years if directors' terms are concurrent two-year terms.
- 2.4. If the Association elects to notify the members of the content of these Election Rules by posting these Election Rules on the Association's website, the Association shall comply with the ballot content requirements of section 10.2.

### **3.0. Board of Directors**

- 3.1. Number. The Board shall consist of five (5) directors who shall be members.
- 3.2. Term and Term Structure. The term of office of the directors shall be two (2) years and elections shall be held on a staggered basis. All directors shall hold office until their respective successors are elected.
- 3.3. Quorum of Directors. A majority of the total number of directors shall constitute a quorum for the transaction of business at a meeting of the Board. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.
- 3.4. Cumulative Voting. Election to and removal from the Board shall be by cumulative voting as defined in California Corporations Code, Section 7615 and any successor statutes or laws, except that no member shall be entitled to cumulate votes for a candidate or candidates unless such candidate's name or candidates' names have been placed in nomination prior to the voting and the member has been given notice at the meeting prior to the voting of the member's intention to cumulate votes. If any one member has given such notice, all members may cumulate their votes for candidates in nomination. Each member shall be entitled to vote, in person or by proxy, as many votes as such member is entitled to exercise as provided in these Bylaws multiplied by the number of directors to be elected or removed, and he may cast all of such votes for or against a single candidate or director, or such member may distribute them among the number of candidates or directors to be elected or removed, or any two or more of them. The candidates receiving the highest number of votes up to the number of directors to be elected shall be deemed elected.

### **4.0 Election Notice & Candidate Qualifications.**

- 4.1. Notice for Nominations. The Association shall provide general notice (typically by posting notice in the common area) of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice (typically by mail or email) shall be delivered pursuant to Civil Code Section 4040 if individual notice is requested by a member.

- 4.2. Notice Required. The Association shall provide general notice of all the following at least 30 days before the ballots are distributed:
- a. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections.
  - b. The date, time, and location of the meeting at which ballots will be counted.
  - c. The list of all candidates' names that will appear on the ballot. This requirement will generally be met by including the names of all candidates who have been accepted for nomination on the ballot itself.
  - d. Individual notice of the above information shall be delivered pursuant to Civil Code Section 4040 if individual notice is requested by a member.
- 4.3. Mandatory Disqualification. The Association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time the request for nomination is received. If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this section. The Association shall be entitled to require that any such legal entity provides the Association with written confirmation of the name of the natural person appointed by that entity, and that such confirmation is signed by an officer of that entity, or other person ostensibly authorized by that entity to confirm such appointment, before that person shall be accepted for nomination as a candidate.
- 4.4. Other Grounds for Disqualification. The Board, has, by these Election Rules, determined that a candidate, or prospective candidate, shall be disqualified from running for the Board, or disqualified from continuing to serve on the board pursuant to subdivision (e) of this section 4.4, if:
- a. **subject to section 4.5**, the candidate fails to remain current (i.e. becomes delinquent) in the payment of regular and special assessments at any time during the candidacy;
  - b. the candidate, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the candidate and the other person has either already been accepted for nomination for the current election or is an incumbent director whose term in office will automatically continue beyond the election date.
  - c. the candidate has been a member of the association for less than one year as measured from the date that the request for candidate nominations is sent out;

- d. the candidate discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the candidate were elected, either:
  - (i) prevent the association from purchasing the fidelity bond coverage required by Section 5806 of the Civil Code; or
  - (ii) terminate the association's existing fidelity bond coverage.
- e. section 4.4(a) shall apply equally to a sitting director that fails to remain current in the payment of regular or special assessments such that he or she shall be disqualified from serving on the Board after compliance with section 4.6.

4.5 Limitations on Disqualification. The Board shall not disqualify a candidate for non-payment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third-party. Subject to paragraph (a) of section 4.4, a candidate shall not be disqualified for failure to be current in payment of regular and special assessments if:

- a. The person has paid the regular or special assessment under protest pursuant to Civil Code Section 5658; or
- b. The person has entered into, and has continued to comply with the terms of, a payment plan pursuant to Civil Code Section 5665.

4.6. The Board shall not disqualify a candidate from nomination if the candidate has not been provided the opportunity to engage in Internal Dispute Resolution ("IDR") in accordance with the Association's governing documents or the default provisions of Civil Code Section 5915. By these Election Rules, which shall be delivered to each member prior to the election in accordance with the requirements of Civil Code Section 5105(g)(4)(B), notice is hereby given to all members that if such member wishes to be a candidate for the Board (or if a legal entity who is not a natural person, wishes to appoint a natural person to be a candidate for the Board) and the Association rejects the candidate's nomination for any of the bases set forth in Section 4.4, such person shall have an opportunity within ten days of the Association providing them with written notice of the rejection to engage in IDR as provided above. In default of such person both accepting and completing such IDR process within this ten-day period, that person will be subject to disqualification from either being a nominee, or if already a nominee, from continuing to be a candidate for the Board. If ballots with that person's name have already been mailed out to the membership, no further action need be taken by the Association regarding such ballots in order for any disqualification to apply. Rather, the Inspector will not count any votes which have been cast for that disqualified person.

## **5.0. Nomination for the Board of Directors.**

- 5.1. Establish Date of Meeting. The Board shall establish the date of the meeting when the votes are to be counted. The Board shall also determine the deadline date by which the ballots must be received by the Inspector(s) of Election. This date can be either prior to the meeting when no voting shall be permitted at the meeting, or this date may be the date and time of the meeting when voting is to take place at the meeting. The Board shall have the right, on one or more occasions, to extend the deadline date by which the ballots must be received by the Inspector(s) in order to be counted provided that the date of each succeeding extended deadline is notified to the membership by general notice and before any ballots are opened. In addition to general notice to be given of any extended deadline for the receipt of ballots, general notice will also be given of the new date, time and location of the meeting at which ballots will be counted.

## **6.0. Campaign Protocols.**

### **6.1. Campaigns.**

- a. During election periods all candidates shall have equal access to the Association's Media, including, but not limited to, newsletters, websites, and bulletin boards, but only for purposes that are reasonably related to the election. The issue of "equal access" shall be determined solely by the Board.
- b. With regard to candidate or member writings intended for distribution to the members, the Association may also include a statement specifying that the candidate or member, and not the Association, is responsible for the content of the communication.
- c. No submission for distribution shall be edited for content. Modifications to formatting may be made so as to allow for space and/or media restrictions. If any formatting modifications should become necessary, they shall be applied equally to all submissions and at no time shall any formatting be applied that may signify a preference or partiality.
- d. Any expense that may be required for the distribution of submitted materials shall be borne solely by the submitting party. These expenses may include, but are not limited to, administrative services, reproduction costs, postage, and supplies. Any costs shall be approved and paid by the submitting member prior to distribution.
- e. The Association shall provide at no cost, access to any Association common area meeting space, if any, to any member or candidate advocating a point of view or opinion during the campaign period. The use of the common

area meeting space must be for purposes reasonably related to the election. Any such use of the common area facilities shall be regulated by any existing rules for such use.

- f. All requests for access to the common area facilities for campaigning purposes must be submitted in writing, shall be made in advance, and are subject to first come priority scheduling. The Board, in its sole discretion, may reasonably limit a candidate's or member's access to common area facilities in order to facilitate equal access for other candidates and members, and so as not to unreasonably interfere with other members' rights to use such facilities.

## **7.0. Inspector(s) of Elections.**

### **7.1. Selection of Inspectors.**

- a. The Board shall select an independent third-party to be the Inspector(s) of Elections. The Board shall have the power to remove an Inspector who ceases to meet the required qualifications, is unable or unwilling to perform his duties, or for other good reason, as determined by the board, and to appoint a new Inspector in his place.
- b. An independent third-party may consist of members of the Association but may not consist of any of the following:
  - (i) a member of the Board;
  - (ii) a candidate for the Board;
  - (iii) a relative of a member of the Board;
  - (iv) a relative of a candidate for the Board; or
  - (v) a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable service, other than serving solely as an Inspector of Elections.

7.2. Number of Inspectors. The Inspector(s) of Elections shall be comprised of either one or three persons. In no case shall an Inspector(s) of Elections panel be comprised of an even number of Inspectors. If there are three (3) Inspectors of Elections, the decision or act of a majority shall be effective in all respects as the decision or act of all.

7.3. Duties of Inspectors. The Inspector(s) of Elections shall be responsible to perform the following tasks associated with any vote or election:

- a. At least 30 days before an initial election date deadline for the receipt of ballots, deliver, or cause to be delivered, to each member both of the following documents:

- (i) The ballot or ballots; and
- (ii) A copy of these Election Rules.

Unless the Inspector(s) expressly requires otherwise, it shall be automatically assumed by the Association that the Inspector(s) authorizes and requires that (a) the Association deliver the ballots and copy of the Election Rules to the membership in compliance with these obligations; (b) that the Association, its legal counsel or an agent selected by the Board, shall prepare the form of ballots and all other election materials to be distributed to the membership and (c) that ballots be returned and retained by such person or entity as shall be provided in the election materials prepared and distributed by the Association, its legal counsel or Association agent.

- b. Determine the number of memberships entitled to vote and the voting power of each.
- c. Determine authenticity, validity, and effect of submitted proxies, if any.
- d. Receive ballots.
- e. Retain Association Election Materials according to section 9.6.
- f. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- g. Determine poll opening and closure times, if actual voting is to take place at the meeting.
- h. Counting and tabulation of all ballots.
- i. Determine results of voting.
- j. Make corrections to voter lists and candidate registration lists according to section 10.6.
- k. Perform any other acts that are necessary and proper to conduct the election with fairness to all members in accordance with the Corporations Code (if applicable), the Association's governing documents, and Civil Code §§ 5100 et. seq.

7.4. Performance of Duties. The Inspector(s) of Elections shall perform his or her duties impartially, in good faith, to the best of his or her ability, as quickly as possible, and in a manner that protects the interests of all members of the association. Any

report made by the Inspector(s) of Election is prima facie evidence of the facts stated in the report.

- 7.5. Power to Delegate. The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) of Elections deem appropriate; provided, however, that the appointed persons are independent third parties.

## 8.0. Voting.

- 8.1. Voting Classes. The Association's Bylaws and/or CC&Rs provide definitions for, and the rights of, each membership Voting Class in the Association.
- 8.2. Voting by Members. In any voting matter of the Association, each member (as defined in the Association's governing documents), or a person who has been appointed as an attorney in fact pursuant to a general or special power of attorney signed by a member, shall be entitled to a single vote for each separate interest owned by that member and for which regular assessments have commenced against such separate interest. The Association may not deny a ballot to a member other than due to such member not being a member at the date of distribution (or the record date of entitlement to vote if different from the date of distribution). The Association may also not deny a ballot to a person holding a general power of attorney for a member. It is required that the ballot cast by a person under a general power of attorney be counted if returned in a timely manner.
- 8.3. Voting by an Attorney in Fact under a Power of Attorney. If a member appoints an attorney in fact to vote for the member under a general or special power of attorney, and notice of such appointment is provided to the Association prior to the election, that member shall for all purposes be deemed to have delegated his, her or its power to vote and shall not have any right to vote in lieu of that attorney in fact unless the Association shall have received notice of revocation of such power of attorney prior to the distribution of the election materials. The Association shall be entitled to require that before any ballot is provided to an ostensible attorney in fact or to a member and/or before the counting of any ballot voted by an attorney in fact with the ballot envelope having been signed by an attorney in fact, that the member or attorney in fact provide to the Association and/or Inspector(s) of Election a complete and unaltered copy of the member's power of attorney purporting to grant to the attorney in fact the power to vote at Association elections on behalf of the member.
- 8.4. Suspension of Voting Rights. The Board may not suspend the voting rights of any member. For purposes of this section 8.4, a person or entity shall be deemed to be a member, if that person or entity is on title as an owner at the date ballots are distributed. However, if the Board selects a different record date for entitlement to vote the person or entity must be a member as of that date.

- 8.5. Format and Scope. All membership voting related to the following shall be conducted by secret ballot: Directors, amendments to the Association's governing documents, regular assessment increases which exceed the authority of the Board of Directors, special assessments, and the granting of exclusive use of common area property. To the extent that the legislature later expands the areas to which this secret ballot process applies, these policies and procedures shall automatically include the areas added by the legislature. The Board shall have the right, but not the obligation, to have elections or voting conducted by the same secret ballot process in respect of other matters for which secret voting is not obligatory by law.
- 8.6. Voting for Write-In Candidates. If the governing documents expressly require, or the Board expressly permits, members may insert the name or names of write-in candidates into the Association ballot and vote for such candidate(s). Voting for write-in candidates shall be deemed to be permitted if the Association ballot includes blank spaces for write-in candidates. If no blank spaces appear on the Association ballot, voting for write-in candidates will be deemed to be prohibited by the Board and not expressly required by the governing documents.
- 8.7. Quorum of Members. Except as otherwise provided in the CC&Rs, the presence at any meeting in person or by proxy of members entitled to cast at least twenty-five percent (25%) of the total voting power of all members of the Association who are entitled to vote on the business to be transacted shall constitute a quorum. No business other than to adjourn the meeting in accordance with the Bylaws can be conducted at a meeting of the members unless a quorum is present.

**9.0. Proxies.**

- 9.1. Distribution. The use of proxies for voting shall be in accordance with the Association's governing documents. Proxies will not be mailed out to the members as part of the election package unless the Board directs otherwise, or the governing documents expressly so require. However, proxies may still be used by the members if voting is to actually occur at a members' meeting but in no other circumstances.
- 9.2. Content. All Proxies shall be consistent in content with the established guidelines as set forth in the Association's governing documents or as may be mandated by applicable law.
- 9.3. Format. All proxies that direct the manner in which the proxy holder is to cast any vote shall include such direction in a separate sheet, which separate sheet must be detached and given to the proxy holder to retain. Any proxy which does not comply with this Section shall be deemed invalid. The proxy holder must be present at the meeting, must be a member of the Association, and shall cast the member's vote by secret ballot provided that voting by proxy is permitted at the meeting.

- 9.4. Validity. A proxy shall not be construed or used in lieu of a ballot. In no case shall any Proxy be valid for a period exceeding eleven (11) months from the date of its execution unless the governing documents provide otherwise.
- 9.5. Proxy Warning. Due to the legal requirement concerning the form of proxy, the Inspector(s) of Election will not be able to verify that the proxy holder has voted in a manner consistent with what is directed on the proxy form.

## 10.0. Ballots.

- 10.1. Distribution. Ballots for all Elections where voting by secret ballot is required in accordance with Civil Code Section 5100 shall be distributed along with two pre-addressed (2) envelopes and instructions for submission via first class mail or hand delivery. Distribution shall be made not less than thirty (30) days in advance of the deadline by which ballots must be received in order to be counted.
- 10.2. Content. Ballots for the election of directors, or materials accompanying such ballots, shall contain the names of all candidates who have been nominated in accordance with the established guidelines as at the date when the ballots are distributed. Ballots for an election relating to any other matter to be voted on must contain a description of the item to be voted on and a space for the voting member to indicate approval or disapproval of each ballot measure. Secret ballots shall not contain any identification indicators related to the voting member; including names, addresses, and lot or unit numbers or similar identifying information. Secret ballots shall not be signed by the voting member or authorized attorney in fact.

In accordance with section 2.4, if the Association elects to provide notice of these Election Rules to the members by posting the Election Rules on the Association's website, then the ballots must also include the website address with the following phrase in 12-point font type:

“The rules governing the election may be found here and the Election Rules may not be amended less than 90 days prior to election.”

- 10.3. Submission. Ballots for all elections conducted by secret ballot shall be enclosed in a sealed inner envelope and then inserted into an outer or second envelope that is sealed. In the upper left-hand corner of the second envelope, the voting member shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope must be addressed and sent to the Inspector(s) of Elections to be retained until the completion of tabulation of the votes. The envelope may be mailed or delivered by hand to the specified location. Ballots may not be delivered by a third party unless the voting member is, for good cause, unable to himself or herself deliver the ballot. If a ballot is delivered by a third party otherwise than in such circumstances, it may be deemed invalid by the Inspector(s) of Election. If a quorum is required by the

governing documents, each ballot received by the Inspector(s) of Election shall be treated as a member present at a meeting for purposes of establishing quorum. Ballots (and/or corresponding envelopes) which do not comply with these requirements shall not be counted and shall not count towards quorum.

- a. Ballots, signed voter envelopes, the voter list, proxies, and candidate registration list submitted to the Inspector(s) of Elections shall be held in their sealed envelopes until the date of the meeting at which time such ballot envelopes shall be opened and counted. In no case shall any ballot be opened, viewed, or otherwise reviewed prior to the date and time that has been established for the counting of said ballots. Once the ballot has been received by the Inspector(s) of Elections it may not be revoked or otherwise recalled. If more than one ballot is received for any separate interest, the Inspector(s) of Elections shall determine its validity.
- b. All voting by ballot must utilize the official Association form and envelopes or such other form and envelopes as determined by the Inspector(s) of Election, if different. Reproductions and copies will not be accepted. Should a member lose or spoil his or her ballot, a new ballot may be requested from the Association or inspector(s) of election if the inspector(s) have prepared the election materials and the new or replacement ballot shall be promptly sent to the requesting member.
- c. members may request a receipt for the delivery of a ballot envelope.

10.4. Tabulating. The Inspector(s) of Elections shall tabulate all ballot submissions in public view at a properly noticed meeting of the Board or members set for the purpose, among possibly other purposes, of opening the ballot envelopes and counting the ballots. The counting and tabulation shall be done in public, (i.e. in the presence of any members or authorized attorneys in fact for a member who wish to be present and who attend the meeting). The Inspectors may appoint additional persons to assist in the counting and tabulation of ballots, provided that such additional persons meet the same minimum qualifications as the Inspectors. Members or persons not specifically authorized to do so may not touch any secret ballot or other election material in the possession of the Inspector(s) of Election. Any candidate, member or authorized attorney in fact who has been granted the power to vote by a member may witness the counting and tabulation of votes from a reasonable distance, provided, however, that they do not disrupt the process in any manner whatsoever. Observers must stand at least five (5) feet back from the area of counting and tabulation and not communicate, harass, or otherwise interfere with the Inspector(s) in any manner whatsoever. Anyone violating these requirements shall be asked to leave the meeting. The Inspectors shall have the power and authority to cause the removal of any observer who interferes with or disrupts the counting or tabulating process. The Inspector(s) of Election may suspend the counting and tabulation of votes if anyone causes interference with or disrupts the counting or tabulating process or for other good reason. In the event

of such suspension, the Inspector(s) may fix another date, time and/or place to complete the counting and tabulation of votes. The Inspector(s) shall retain exclusive possession and control of all opened and unopened ballots and other election materials. Any re-scheduling of the ballot counting by authority of the Inspector(s) shall not affect the legality of the election or vote counting, or in any way, of itself, constitute grounds to legally challenge the outcome of any election.

- 10.5. Retention of Association Election Materials. The Association Election Materials shall be retained as provided herein. "Association Election Materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but shall not be copied. The sealed ballot, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections until after the tabulation of the vote, and until the time allowed by Civil Code Section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association. In the absence of any express written direction from the Inspector(s) of election to the contrary, the Inspector(s) shall be deemed to have designated the location where such records are to be kept as the Association business office or the office of any managing agent for the Association as the Board shall determine. At the expiration of the retention period all ballots and other election materials will be destroyed.
- 10.6. Inspection of Election Materials and Challenge to Elections. Members are entitled to verify the accuracy of their individual information on both the candidate registration list and voter list at least 30 days before the ballots are distributed. In order to exercise such right, the Association must receive a request from the member concerned allowing for a sufficient and reasonable time for the Association to provide either or both lists as requested to the member before the distribution of ballots occurs. In no respect shall the distribution of ballots be delayed due to a member's failure to timely request to inspect either the candidate registration list or voter list. If, during an inspection of either list, a member discovers an error or omission to the registration list or voter list, the Association or the member shall immediately notify the Inspector(s) of Elections of the error or omission. Within two business days of being notified, the Inspector(s) of Elections shall make the necessary corrections to the list(s).
- 10.7. Request for Recount. If there is a request for a recount or other challenge to the election process, the Inspector(s) of Election shall, upon written request, make the ballots available for inspection and review by a member or the member's authorized representative. Any recount shall be conducted in a manner that preserve the confidentiality of the vote. A review or inspection shall be conducted in a manner that will ensure that no ballots or other election materials can be removed, altered or otherwise tampered with.

- 10.8. Tie Vote. If there is a tie vote between or among candidates after the ballots of an election have been tabulated, the Association shall hold a run-off election consistent with the Civil Code unless the candidates can agree on an alternative method of deciding the issue. Such alternative method must be reasonable but may include a method which decides the matter entirely by chance, such as a coin toss.

**11.0. Election Results.**

- 11.1. The results of the election shall be promptly reported to the Board of the Association.
- 11.2. The results shall be recorded in the minutes of the next meeting of the Board and shall be available for review by members.
- 11.3. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a written notice to the members.

**12.0. Elections Pertaining to Matters other than the Election of Directors.**

- 12.1 When voting on other matters besides director elections, and which come under the scope of California Civil Code Sections 5100, et. seq., the Association shall generally use the procedures outlined above, but the Board may adjust the procedures to account for differences between director elections and the election at hand, e.g., special assessments, increasing the regular assessment, amendments, and the grant of exclusive use of common area.

**13.0. Recall and Other Special Meetings.**

- 13.1. Recall and other special meetings requested by membership petition will be conducted in such a manner as will allow for compliance with the time limits as provided by these Election Rules, with the election procedures appropriately adjusted depending on the relevant factors involved, e.g. whether a replacement Board is to be elected immediately following a successful recall, or at a later date by a separate election. The Board may, in their sole and reasonable discretion, determine how recall and other special elections are to be conducted both in compliance with these Rules and what the Board deems to be in the best interests of the Association, regardless of the terms used in any members' petition received by the Association requesting that a recall or other special election be held.
- 13.2. Unless otherwise required by law, a special meeting to recall the members of the Board may not be reconvened if a quorum is not achieved at the meeting called for that purpose. The members shall not have the power to reconvene the meeting or allow additional time for additional ballots to be submitted or members present to be counted.

These Election Rules have been duly adopted by Board Resolution on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, and shall be deemed in full force and effect as and from January 1, 2020, or the date of adoption, if later.

\_\_\_\_\_  
Secretary or other duly authorized Officer

\* \* \* *Remainder of this page intentionally left blank* \* \* \*



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6  
7  
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN DIEGO**  
11

12	SCOTT NICHOLSON, as trustee of The Scott )	Case No. 37-2022-00031446-CL-MC-CTL
13	Nicholson Trust dated April 23, 2020, )	
14	Plaintiff, )	<b>FIRST AMENDED COMPLAINT FOR</b>
15	v. )	<b>DAMAGES:</b>
16	HERBERT H. BAYARD and MARY JO )	<b>1. NEGLIGENCE;</b>
17	BAYARD, trustees of the Bayard Family Trust )	<b>2. PRIVATE NUISANCE;</b>
18	Dated: 5/10/12; HERBERT H. BAYARD, an )	<b>3. BREACH OF COVENANTS,</b>
19	individual; MARY JO BAYARD, an individual;) )	<b>CONDITIONS &amp; RESTRICTIONS;</b>
20	ACQUA VISTA HOMEOWNERS )	<b>AND</b>
21	ASSOCIATION, a California non-profit )	<b>4. NEGLIGENT MISREPRESENTATION.</b>
22	corporation; and DOES 1 through 10, inclusive, )	<b>LIMITED CIVIL ACTION, AMOUNT</b>
23	Defendants. )	<b>DEMANDED EXCEEDS \$10,000</b>
24	)	<b>DEMAND FOR JURY TRIAL</b>

Judge: Hon. James A Mangione  
Dept.: C-75  
Action Filed: August 8, 2022

25 COMES NOW Plaintiff SCOTT NICHOLSON, trustee of The Scott Nicholson Trust dated  
26 April 23, 2020, for causes of action against Defendants, and each of them, and alleges as follows:  
27  
28

1 **IDENTIFICATION OF THE PARTIES**

2 1. Plaintiff, SCOTT NICHOLSON, as trustee of The Scott Nicholson Trust dated  
3 April 23, 2020 (“PLAINTIFF”) is a competent adult who resides in the County of San Diego, State  
4 of California.

5 2. PLAINTIFF is the title owner of that certain real property located at 425 W. Beech  
6 Street, Unit 1754, San Diego, CA 92101 (the “Nicholson Unit”). The Nicholson Unit is a  
7 condominium unit located in the building commonly known as, ‘Acqua Vista,’ located at 425 W.  
8 Beech Street, San Diego, CA 92101 (the “Building”).

9 3. PLAINTIFF is informed and believes and thereon alleges that Defendant ACQUA  
10 VISTA HOMEOWNERS ASSOCIATION (“ACQUA VISTA”) is a California non-profit  
11 corporation, and that Defendant ACQUA VISTA manages and operates the Building and is  
12 required by California law to act as a reasonably prudent property manager, charged with  
13 maintaining and repairing conditions at the Building.

14 4. PLAINTIFF is informed and believes and thereon alleges that Defendants  
15 HERBERT H. BAYARD and MARY JO BAYARD, trustees of the Bayard Family Trust  
16 dated 5/10/12 (the “BAYARD TRUST”), are the owners of that certain real property located at  
17 425 W. Beech Street, Unit 1752, San Diego, CA 92101 (the “Bayard Unit”).

18 5. PLAINTIFF is informed and believes and thereon alleges that Defendants  
19 HERBERT H. BAYARD and MARY JO BAYARD, each an individual (collectively, the  
20 “BAYARDS”) reside at the Bayard Unit and have resided at the Bayard Unit for all time periods  
21 relevant to the facts alleged herein. Whenever in this complaint reference is made to Defendants  
22 BAYARDS or Defendant BAYARD TRUST, it shall be construed as referring to Herbert and  
23 Mary Jo Bayard in their appropriate titles and/or positions, either as residents/occupants or trustees  
24 of the title owner of the Bayard Unit.

25 6. The true names and capacities of Defendants sued herein under Section 474 of the  
26 Code of Civil Procedure as DOES 1 through 10, inclusive, are unknown to PLAINTIFF, or  
27 PLAINTIFF is presently unaware of causes of action versus said defendants and/or the true and  
28

1 correct identity of said defendants. PLAINTIFF therefore sues said defendants by such fictitious  
2 names. Each defendant is somehow responsible in some manner for the events herein referred to  
3 and was thus a cause of the damages and injuries suffered by PLAINTIFF as hereinafter alleged.

4 7. Whenever in this complaint reference is made to any act or omission of Defendant  
5 ACQUA VISTA, such allegation shall be deemed to mean that said Defendant, and its officers,  
6 directors, agents, representatives, and employees, did authorize such act while actively engaged in  
7 the management directions or control of said Defendant, and while acting within the course and  
8 scope of their employment.

9 8. PLAINTIFF is informed and believes and based thereon alleges that Defendants,  
10 including DOES 1 through 10, or their agents, employees, or representatives are responsible in  
11 some way for the damages and/or defects hereinafter alleged.

#### 12 GENERAL ALLEGATIONS

13 9. The Nicholson Unit is a two-story condominium unit located on the seventeenth  
14 (17th) (lower portion/element) and eighteenth (18th) (upper portion/element) levels of the  
15 Building. PLAINTIFF is informed and believes and thereon alleges that the lower portion/element  
16 of the Nicholson Unit is located directly across the hallway from the lower portion/element of  
17 Bayard Unit. The upper portion/element of the Nicholson Unit spans the width of the Building and  
18 is located adjacent to the upper portion/element of the Bayard Unit, which also spans the width of  
19 the Building.

20 10. PLAINTIFF is informed and believes and thereon alleges that a bathroom exists in  
21 the upper portion/element of the Bayard Unit (the "Bayard Bathroom"). PLAINTIFF further  
22 alleges that the kitchen area, or portions thereof, on the lower portion/element of the Nicholson  
23 Unit (the "Kitchen") is located directly below the Bayard Unit and/or Bayard Bathroom.

24 11. In or about May 2021, PLAINTIFF discovered black spots exposed on the ceiling in  
25 the Kitchen. PLAINTIFF thereafter caused the ceiling drywall to be removed to inspect the source  
26 of the black spots and to investigate other potential moisture, fungi and/or bacteria above the  
27 ceiling drywall. PLAINTIFF is informed and believes and thereon alleges that the black spots  
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1 were mold or some other fungus and/or bacteria, caused by water leaks which formed above the  
2 Kitchen. PLAINTIFF was forced to remove cabinet frame boxes, along with cabinet drawers and  
3 doors, from the Kitchen walls to properly investigate the extent of the water moisture, leakage, and  
4 mold or other fungi and/or bacteria. Such investigation required the removal of the ceiling  
5 drywall, the cabinets, and the drywall of the walls in the Kitchen.

6 12. PLAINTIFF or PLAINTIFF's agent contacted Defendant ACQUA VISTA to  
7 investigate the water leaks. During this period of investigation, which transpired for approximately  
8 one month, the walls and ceiling drywall in the Kitchen area were removed and exposed.  
9 PLAINTIFF discovered a pipe, located directly above the area of the Kitchen ceiling where the  
10 black spots were initially discovered. PLAINTIFF is informed and believes and thereon alleges  
11 that such pipe leads up to the Bayard Bathroom, and more specifically to the underside of the toilet  
12 in the Bayard Bathroom. PLAINTIFF further alleges, in or around May 2021, the outer portions of  
13 the pipe contained a significant amount of rust. The water leaks caused rust to form on, or  
14 accelerated the formation of rust thereon, the drainpipe leading to the Bayard Bathroom.

15 13. PLAINTIFF is informed and believes and thereon alleges that the mold, or other  
16 fungi and/or bacteria, initially discovered on the Kitchen ceiling was caused by continuous water  
17 leaks from the Bayard Bathroom, specifically the toilet therein, directly above the Kitchen. The  
18 water from the toilet, or some other defect in the Bayard Bathroom, leaked at and around the base  
19 of the toilet, between the bathroom tiles and the wax ring at the base of the toilet, or between and  
20 through some other defect in the Bayard Bathroom, and the water percolated down the outside of  
21 the drainpipe thereunder, leading directly overtop the Kitchen of the Nicholson Unit.

22 14. In or around May 2021, PLAINTIFF alleged to all Defendants that the source of the  
23 leak was the Bayard Unit, specifically the area in the Bayard Unit above the Kitchen. PLAINTIFF  
24 is informed and believes and thereon alleges that each of the Defendants BAYARDS was  
25 knowledgeable of the initial investigation of the water leaks and allegations made against them that  
26 the source of the water leak was the toilet in the Bayard Bathroom. PLAINTIFF reasonably  
27 assumed that Defendants BAYARDS had the knowledge of reasonably prudent owners and that  
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1 they would take reasonable actions, including investigating the cause of the water leaks and the  
2 resulting mold, fungi and/or bacteria, and timely hire professionals to investigate necessary repairs.  
3 At the time of this reasonable assumption and reliance, Defendants BAYARDS were aware of  
4 these latent problems with the Bayard Unit.

5 15. PLAINTIFF further alleges that Defendant ACQUA VISTA was knowledgeable  
6 that the source of the leak was the Bayard Bathroom or a portion of the Building under the control  
7 of Defendant ACQUA VISTA. PLAINTIFF reasonably assumed Defendant ACQUA VISTA  
8 would take appropriate and timely action investigate, identify and cure the ongoing water leaks and  
9 damage to the Nicholson Unit. At the time of this reasonable assumption and reliance, Defendant  
10 ACQUA VISTA was aware of these defects with the Bayard Unit or a portion of the Building  
11 under the control of Defendant ACQUA VISTA. Plaintiff further alleges that Defendant ACQUA  
12 VISTA knew in or around May 2021 that, prior to May 2021, pipes in the Building were  
13 determined to be defective.

14 16. During the time which the ceiling drywall was exposed, PLAINTIFF caused the  
15 pipe leading to the toilet in the Bayard Bathroom to be repainted in a white tone/color.  
16 Subsequently, in or around May or June 2021, and based upon PLAINTIFF's reasonable reliance on  
17 the Defendants' duty to cure the known defects, PLAINTIFF caused the walls and ceiling to be  
18 restored with new drywall and paint. Further, the cabinet frame boxes and drawers/doors, which  
19 had been removed from the wall for purposes of the investigation, were reinstated onto the walls.  
20 The necessary process of removing and returning the cabinets to the walls damaged the structural  
21 integrity of the cabinet frame boxes.

22 17. In or around September 2021, PLAINTIFF discovered new black mold spots on the  
23 newly-repaired and repainted Kitchen ceiling. Additionally, water spots bubbling from the  
24 moisture were discovered in the same area as the black mold spots on the Kitchen ceiling. Upon  
25 discovery of the new black mold spots and water spots, PLAINTIFF contacted Defendant ACQUA  
26 VISTA to determine the party responsible to stop the leaks and fix the multiple molding and water  
27 issues. Defendant ACQUA VISTA claimed it was not an HOA issue, and Defendant ACQUA  
28

1 VISTA refused to fix the leaks.

2 18. Thereafter, PLAINTIFF acted swiftly to remove the portion of the Kitchen ceiling  
3 drywall containing black mold spots and water spots. PLAINTIFF confirmed the black mold spots  
4 and water spots were caused by water leaks on the outside surface of the drainpipe leading down  
5 from the Bayard Bathroom, specifically the toilet in the Bayard Bathroom. PLAINTIFF placed  
6 common kitchen item(s) into the exposed portion of the ceiling to track the leaking water and  
7 mitigate damages caused by the water leaks. Plaintiff is informed and believes and thereon alleges  
8 that the water leaks continue to occur above the Kitchen ceiling, and mold, other fungi and/or  
9 bacteria grow above the Kitchen ceiling and elsewhere in the Kitchen.

10 19. PLAINTIFF is informed and believes and thereon alleges that the repeated water  
11 leaks emanated from a faulty wax ring around the base of the toilet or some other defect in the  
12 Bayard Bathroom, which leaks caused water to run down the outside of the drainpipe each time the  
13 toilet was flushed. The continuous leaks built up moisture over time and caused the mold, fungi  
14 and/or bacteria on the Kitchen ceiling to form and fester. Additionally, by the second period of  
15 investigating the water leaks, the water on the outside of the drainpipe leading down from the  
16 Bayard Bathroom had eroded the new coat of paint, and caused new and/or more rust on the  
17 outside of the pipe.

18 20. In or around September 2021, PLAINTIFF, his tenant or his agents attempted to  
19 discuss the water leak with Defendants BAYARDS, but Defendants BAYARDS were hostile  
20 toward PLAINTIFF or his tenant, realtor, plumber or other agents. PLAINTIFF is informed and  
21 believes and thereon alleges that Defendants BAYARDS expressly denied responsibility for the  
22 water leaks. PLAINTIFF further alleges that, at one point during a conversation with  
23 PLAINTIFF's tenant or other agent, Defendants BAYARDS expressly stated that the Bayard  
24 Bathroom is not located above any portion of the Nicholson Unit. Such statements by Defendants  
25 BAYARDS were misleading to PLAINTIFF, who had previously been verbally informed by  
26 Defendant HERBERT BAYARD in or around May 2021, while both persons were located in the  
27 Nicholson Unit, that Defendants BAYARDS had an issue with a shower in the Bayard Bathroom

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1 and such shower was located above the Kitchen. PLAINTIFF further alleges that in or around  
2 September 2021, Defendants BAYARDS led PLAINTIFF or his agents to believe that Defendants  
3 BAYARDS did not have a duty to act to mitigate the water leaks causing damage to the Kitchen.

4 21. PLAINTIFF further alleges that, in or around September 2021, Defendant ACQUA  
5 VISTA informed PLAINTIFF via written electronic communication it was determined by  
6 Defendant ACQUA VISTA that the drain pipe above the Kitchen is the same drain pipe leading to  
7 the Bayard Bathroom. Defendant ACQUA VISTA denied any responsibility for the water leaks  
8 above the Kitchen, despite the knowledge by Defendant ACQUA VISTA that piping in the  
9 Building under the control of Defendant ACQUA VISTA had previously been determined to be  
10 defective and thus could be the source of the water leaks causing damage to the Nicholson Unit.

11 22. PLAINTIFF has been unable to replace the drywall in the ceiling which contained  
12 black mold spots and water spots. Additionally, PLAINTIFF has been unable to conduct a full  
13 investigation of other portions of the ceiling or walls in the Kitchen area. PLAINTIFF is informed  
14 and believes and thereon alleges that a full and proper investigation of the damages caused by the  
15 water leaks is necessary and requires the ceiling and wall drywalls, and cabinet frame boxes, to be  
16 completely removed; however, PLAINTIFF has not yet caused the cabinet frame boxes and  
17 drawers/doors to be removed from the wall.

18 23. Defendants, including DOES 1 through 10, were under a duty to exercise ordinary  
19 care whether as neighbors, owners, landlords, maintenance professionals, property managers,  
20 plumbers, sellers, buyers, and/or users, to avoid reasonably foreseeable injury and property damage  
21 to residents living in the Building, including PLAINTIFF. Defendants BAYARDS own and owe a  
22 duty to maintain the Bayard Unit, the upper portion/element of which is directly above the  
23 Nicholson Unit. Defendant ACQUA VISTA manage and owe a duty to maintain the Building.  
24 They breached their duties by creating and then allowing defective conditions to persist at and in  
25 the property which thereby created water intrusions and leaks into the Nicholson Unit, which  
26 injured PLAINTIFF and his property and caused the damages alleged herein.

27 24. Defendants, and each of them, including DOES 1 through 10, were aware  
28

1 throughout the relevant time periods that the water leaks were occurring but failed to timely and/or  
2 adequately remedy the issue, causing damage to PLAINTIFF and his property. Defendants should  
3 have been aware that mold damages property and is potentially harmful to human health.  
4 Defendants also knew or should have foreseen the potential for injury to residents, such as  
5 PLAINTIFF, and his property. Defendants did not act with reasonable care and in accordance with  
6 the applicable codes, laws, ordinances, regulations, statutes, and constitutions, if any.

7 25. As a proximate and legal result of the acts, conduct, failure to act, and/or omissions  
8 of the Defendants, and their employees, agents and servants, PLAINTIFF and his property has  
9 suffered foreseeable injury and will continue to suffer injuries and damages in an amount which is  
10 within this Court's jurisdiction and in an amount that will be proven at time of trial. The presence  
11 of ongoing water leaks and excessive moisture, and Defendants' failure to timely or properly  
12 investigate, remedy, and cure said issues have led to and continue to lead to significant damage to  
13 the Nicholson Unit.

14 26. PLAINTIFF is informed and believes and thereon alleges that PLAINTIFF and  
15 Defendants BAYARDS and/or BAYARD TRUST are "Owners," as that term is defined by that  
16 certain Declaration of Covenants, Conditions and Restrictions of Acqua Vista (the "CC&Rs").  
17 PLAINTIFF further alleges that, under the CC&Rs, all Defendants, and each of them, owe duties  
18 to maintain and repair utilities, including toilets and piping, under their control. All Defendants  
19 breached their contractual duties when they failed to adequately maintain and repair private sewer  
20 utilities, private water utilities, and any other utilities under their control, which caused damage to  
21 the Nicholson Unit.

22 27. PLAINTIFF is informed and believes and thereon alleges that claims brought under  
23 the CC&Rs to enforce the provisions and duties therein entitle the prevailing party to recover  
24 attorneys' fees from the non-prevailing party or parties.

25 28. Defendants took actions or engaged in omissions which tolled any statute of  
26 limitation and which are sufficient to justify an estoppel or waiver because Defendants' acts,  
27 representations, and/or omissions made PLAINTIFF unaware of the problems at the Building, the  
28

1 necessity to sue and/or unaware of the causes of action and delayed discovery thereof.  
2 Additionally, Defendants have unclean hands.

3 29. This Court has jurisdiction over all causes of action asserted herein pursuant to  
4 California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to  
5 other trial courts. Furthermore, jurisdiction is proper with this court as a limited civil action  
6 pursuant to Code of Civil Procedure § 86 because the estimated damages are within the court's  
7 jurisdiction.

8 30. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
9 Civil Procedure § 395(a). Defendants' actionable and unlawful conduct complained herein  
10 occurred in San Diego County, Defendants BAYARDS reside in San Diego County, and the  
11 Building is located in San Diego County.

12 **FIRST CAUSE OF ACTION**

13 (Negligence Against All Defendants and DOES 1-10, inclusive)

14 31. PLAINTIFF hereby incorporates by reference each and every previous and  
15 subsequent allegation as though fully set forth herein.

16 32. PLAINTIFF is informed and believes and based thereon alleges that Defendants  
17 owed a duty to PLAINTIFF to exercise reasonable care in performing their duties and  
18 responsibilities. Specifically, Defendants BAYARDS had a duty to maintain and repair the Bayard  
19 Unit, including the Bayard Bathroom. Further, Defendant ACQUA VISTA had a duty to maintain  
20 and repair the Building and/or private sewer systems and private water systems therein. The water  
21 leaks were remediable, but Defendants refused and failed to substantively address those issues.  
22 These inactions have led to significant damage to the Kitchen and the Nicholson Unit. Defendants  
23 had notice of these conditions and did breach their duties of due care to PLAINTIFF by acting  
24 unreasonably for reasons including, but not limited to:

- 25 (1) Failure to cure the defects in the Bayard Unit, the Building, and other areas under  
26 Defendants' control, that were known or should have been known, which lead to  
27 increased moisture and exposure to pervasive mold, fungi and/or bacteria;

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- 1 (2) Failing to timely and/or adequately investigate and cure the Bayard Unit, Nicholson  
2 Unit, the Building, or other areas under Defendants' control, after being notified of  
3 water leaks and corresponding damage;
- 4 (3) Failing to reasonably permit inspection of the Bayard Unit and/or the Building;
- 5 (4) Failing to hire, in a timely manner, a professional with regard to the defective toilet  
6 in the Bayard Bathroom, water leaks and corresponding damage, and mold, fungi  
7 and/or bacteria;
- 8 (5) Unduly delaying evaluation and investigation of known defective conditions in the  
9 Bayard Unit and/or Building; and
- 10 (6) Failing to conduct adequate maintenance and inspection.

11 33. As a proximate and legal result of the Defendants' negligent acts or omissions,  
12 PLAINTIFF has suffered property damages and potentially injury to health in an amount presently  
13 unknown, but believed to be within this Court's jurisdiction and which will be established at trial  
14 according to proof.

15 **SECOND CAUSE OF ACTION**

16 (Private Nuisance Against Defendants BAYARDS and BAYARD TRUST, and DOES 1-  
17 10, inclusive)

18 34. PLAINTIFF hereby incorporates by reference each and every previous and  
19 subsequent allegation as though fully set forth herein.

20 35. PLAINTIFF is informed and believes and based thereon alleges that Defendants  
21 BAYARDS and BAYARD TRUST, and each of them, by their acts, conduct, failure to act, and/or  
22 omissions, created, maintained, exacerbated, and concealed a private nuisance and did not take any  
23 reasonable steps to immediately abate said nuisance, although requested to do so. As previously  
24 stated, the presence of ongoing water leaks and excessive moisture, and said Defendants' failure to  
25 timely or properly investigate and cure such issues, have led to and continue to lead to significant  
26 damage to the Nicholson Unit, including a general disruption of PLAINTIFF's use and enjoyment  
27 of the Nicholson Unit, or other residents therein.

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1 within this Court's jurisdiction and which will be established at trial according to proof.

2 **FOURTH CAUSE OF ACTION**

3 (Negligent Misrepresentation Against Defendants BAYARDS and BAYARD TRUST and DOES  
4 1-10, inclusive)

5 43. PLAINTIFF hereby incorporates by reference each and every previous and  
6 subsequent allegation as though fully set forth herein.

7 44. Defendants BAYARDS and BAYARD TRUST, and each of them, made false  
8 representations to PLAINTIFF, including but not limited to false representations about the location  
9 of the Bayard Bathroom, and the source of the water leaks and corresponding damage. Further,  
10 said Defendants, and each of them, made false representation about their duties to maintain and  
11 repair known defects in the Bayard Unit and/or Building. These representations were false and  
12 said Defendants, and each of them, had no reasonable grounds to believe such representations were  
13 true and that PLAINTIFF would not be harmed by the water leaks and resulting mold, fungi and/or  
14 bacteria.

15 45. PLAINTIFF reasonably relied on Defendants' false representations and was harmed  
16 as a result.

17 46. As a proximate and legal result of the acts and/or omissions of said Defendants, and  
18 each of them, regarding their negligent representations, PLAINTIFF has been harmed and suffered  
19 injuries and damages as more fully alleged herein.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands a jury trial and judgment in its favor and against  
22 Defendants, and DOES 1-10, on the claims stated herein, as follows:

- 23 1. For compensatory damages according to proof;
- 24 2. For investigative costs and fees according to proof;
- 25 3. For general damages according to proof;
- 26 4. For actual attorneys' fees and costs according to proof;

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1           5.       For special and incidental damages, including, but not limited to, costs related to  
2 installment of replacement cabinets;

3           6.       For the interest provided by law including, but not limited to, Section 3291 of the  
4 *California Civil Code*; and

5           7.       For such other and further relief as the court deems just and proper.

6

7 DATED: September 22, 2022

**BLANCHARD KRASNER & FRENCH**

8

9 By Kevin J. Oberlies  
10 MARK A. KRASNER, ESQ., CPA  
11 KEVIN J. OBERLIES, ESQ.  
12 Attorneys for Plaintiff, SCOTT NICHOLSON

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**DEMAND FOR JURY TRIAL**

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PLAINTIFF hereby demand a jury trial in the above-entitled action.

Respectfully submitted,

DATED: September 22, 2022.

**BLANCHARD KRASNER & FRENCH**

By Kevin J. Oberlies  
MARK A. KRASNER, ESQ., CPA  
KEVIN J. OBERLIES, ESQ.  
Attorneys for Plaintiff, SCOTT NICHOLSON

**Litigation (Non Required Civil Code Sec. 4525)**  
**Acqua Vista Homeowners Association**

Order: 8D2NTJHCN  
Address: 425 W Beech St Unit 520  
Order Date: 07-13-2023  
Document not for resale  
HomeWiseDocs

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OF COUNSEL  
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March 9, 2023

\*A Professional Corporation  
†Also Licensed in Colorado  
††Also Licensed in Washington

To Whom It May Concern

Re: Litigation Disclosure Letter  
Our File: 7031-001

Dear Sir/Madam:

Please be advised this firm serves as counsel for the Acqua Vista Homeowners Association ("Association"). We are providing this letter to disclose litigation that is currently pending against the Association. As of this date, there are two lawsuits pending against the Association.

The first lawsuit was filed on or about August 8, 2022, by an owner against the Association and other parties for water intrusion issues stemming from the alleged negligence of an owner of a unit along with the Association. Plaintiff's claim for monetary damages is still unspecified at this time. The matter is entitled: *Scott Nicholson v. Bayard; Acqua Vista Homeowners Association* – S.D. Sup. Ct. Case No.: 37-2022-00031446-CL-MC-CTL.

The Association has tendered this matter to its liability carrier and the carrier has hired defense counsel on behalf of the Association. At this point in time, the Association does not expect the lawsuit will have an impact on the Association's finances and we do not foresee any special assessments associated with the matter.

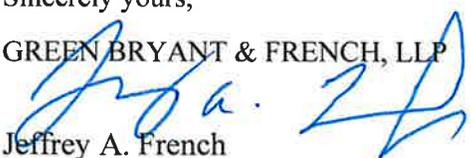
The second matter was filed on or about October 26, 2022, by an owner against the Association relating to claims by the owner concerning his parking space, access to Association documents, and issues with the recent Board of Directors election. The matter is entitled: *James Dean v. Acqua Vista Homeowners Association* – S.D. Sup. Ct. Case No.: 37-2022-00043125-CU-BC-CTL.

The Association has also tendered this matter to its liability carrier and the carrier has hired defense counsel on behalf of the Association. The amount of Plaintiff's demand is still uncertain at this time; however, the Association does not expect that the lawsuit will have an impact on the Association's finances and does not foresee the need for any special assessments associated with the matter.

In the meantime, if you have any questions or concerns regarding this disclosure letter, please do not hesitate to contact the undersigned at any time.

Sincerely yours,

GREEN BRYANT & FRENCH, LLP

  
Jeffrey A. French

JAF:dcc  
cc: Board of Directors

Order: 8D2NTJHCN  
Address: 425 W Beech St Unit 520  
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