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TITLE(S)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

OF

MISSION COMMONS

NOTE: THIS DOCUMENT CONTAINS PROVISIONS REQUIRING AN OWNER OF A CONDOMINIUM TO SUBMIT ALL DISPUTES WITH DECLARANT TO BINDING ARBITRATION AND TO WAIVE ALL RIGHTS TO HAVE THE DISPUTE LITIGATED IN A COURT WITH A JURY TRIAL.

SENATE BILL 800 (THE RIGHT TO REPAIR LAW) APPLIES TO THE PROJECT. IF THE ASSOCIATION OR AN OWNER CLAIMS THAT THERE IS A DEFECT IN THE CONSTRUCTION OF THE PROJECT OR AN OWNER'S DWELLING, DECLARANT HAS ELECTED TO USE THE NON-ADVERSARIAL PRELITIGATION PROCEDURES SET FORTH IN *CALIFORNIA CIVIL CODE* §§910 THROUGH 938, WHICH IS ATTACHED TO THIS DECLARATION.

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

OF

MISSION COMMONS

This Declaration is made this 21st day of April, 2010, by 1400 MISSION FREMONT, LLC, a Delaware Limited Liability Company (hereinafter called "Declarant").

A. Declarant is the Owner of all that certain real property located in the City of South Pasadena, County of Los Angeles, State of California, described as follows:

Lot 1 of Tract 63234 in the City of South Pasadena, County of Los Angeles, State of California, as per Map recorded in Book 1362, Pages 80 to 81 of Maps in the Office of the Los Angeles County Recorder shown and defined on the Condominium Plan recorded concurrently herewith in the Office of the Los Angeles County Recorder (the "Property");

B. Declarant is constructing a mixed use condominium project on the Property (the "Project") consisting of sixteen (16) Residential Condominiums, five (5) of which are Live/Work Condominiums and six (6) Retail Commercial Condominiums which are depicted on the Condominium Plan recorded, or to be recorded, in the Official Records of the County of Los Angeles, State of California, as the same way be amended or superseded from time to time; and

C. The Owners and occupants of Condominiums in the real property described in Recital A above shall have reciprocal non-exclusive easements for ingress, egress and use over the Common Area. Such ingress, egress and use shall be subject to the terms, limitations, restrictions and conditions set forth in this Declaration and to any Rules and Regulations adopted by the governing body of the Association.

D. it is the desire and intent of Declarant to subdivide and sell the property described above and to impose on it mutual beneficial restrictions under a general plan or scheme of Improvement for the benefit of all the Units in the Project and the Owners thereof and to create a certain type of method of co-operative ownership commonly known as a "Condominium," and to subject the said property to the provisions of the applicable laws of the State of California pertaining to Condominiums and other applicable conditions and statutes of the State of California.

E. Declarant hereby declares that all of the Property and all Improvements thereon is, and shall be, held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, maintained, altered and improved subject to the following protective limitations, restrictions, covenants, conditions, reservations, liens and charges

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and equitable servitudes, all of which are declared and agreed to be in furtherance of a plan for the subdivision, Improvement and sale of said real property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and every part thereof. All of said limitations, covenants, conditions, restrictions, reservations, liens and charges and equitable servitudes shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property, or any part hereof, whether as sole Owners, joint Owners, lessees, tenants, occupants, or otherwise, and they shall inure to the benefit of every portion of said property, and shall be for the benefit of each Owner of any portion of said property, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of Declarant and each Owner, and may be enforced by Declarant, by any Owner, by any successor in interest to Declarant, or any Owner, or by the Board of Directors hereinafter described.

ARTICLE I

Definitions

Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

Section 1. Architectural Committee. A committee appointed by the Board of Directors to review and make recommendations to the Board of Directors regarding any and all proposed additions or exterior modifications to any Dwelling, or the Common Area, which requires the approval of the Association and the City pursuant to this Declaration.

Section 2. Approval. Prior written approval.

Section 3. Articles. The Association's Articles of Incorporation as the same may be amended from time to time.

Section 4. Assessment, Annual. "Annual Assessment" shall mean a charge against a particular Owner and his Condominium representing a portion of the costs of maintaining, improving, repairing and managing the Project and all other Common Expenses, which are to be paid by each Owner to the Association for Common Expenses in the manner and proportions provided herein. Each Annual Assessment shall be paid in equal monthly assessments ("Regular Monthly Assessments") on the first day of each month.

Section 5. Assessment, Compliance. "Compliance Assessment" shall mean a charge against a particular Owner and his Condominium directly attributable to, or reimbursable by, the Owner or Owners if the same be required to secure or satisfy any breach of the Declaration, the Articles, Bylaws, or Rules and Regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Association for repair or remedy. Such assessment shall be equal to the cost incurred by the Association for corrective action performed plus costs, interest, and attorney's fees incurred in connection therewith. Compliance Assessments shall not

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include any late payment penalties, interest charges, or costs incurred by the Association (including attorneys' fees) in the collection of Annual and Special Assessments.

Section 6. Assessment, Special. "Special Assessment" shall mean a charge against each Owner and his Unit representing a portion of the cost to the Association for installation or construction or reconstruction of any capital Improvement or other addition on any part of the Project, which the Association may from time to time authorize. Such charge shall be levied amongst all of the Owners in the project as herein provided.

Section 7. Association. 1409 MISSION COMMONS ASSOCIATION, a California Non-Profit Mutual Benefit Corporation, its successors and assigns, the Members of which shall be all of the several Unit Owners. Each Unit Owner shall automatically become and shall be required to be a Member of the Association, whose membership shall include and be limited to each of the Unit Owners of the Project.

Section 8. Beneficiary. "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee, or Beneficiary.

Section 9. Board of Directors. The Board of Directors of the Association.

Section 10. Budget. "Budget" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, which Budget shall be prepared pursuant to the Bylaws of the Association and the *California Civil Code*.

Section 11. Bylaws. The Association's Bylaws as the same may be amended from time to time.

Section 12. City. The City of South Pasadena, California.

Section 13. Common Area. The entire Project, excepting those portions thereof which lie within the boundaries of any Unit as hereinafter defined. The individual Unit Owners shall have an undivided one twenty-second (1/22nd) interest in and to the Common Area of the Property.

Every Owner of a Condominium shall have a non-exclusive easement or right of use, enjoyment, ingress, egress and support in, to and throughout the Common Areas (excluding therefrom the Exclusive Use Common Areas, if any). Each such non-exclusive easement or right shall be appurtenant to and pass with the title to each Owner's Condominium subject to the rights and restrictions in the Declaration or the deed to a Condominium.

No Owner may sever his interest in any Condominium or any component thereof from his membership in the Association and shall not be entitled to sever his interest in his Unit or his membership from his undivided interest in the Common Area.

Section 14. Common Area, Exclusive Use. Those portions of the Common Area, if any, which are, or may be, reserved for the exclusive use of one or more, but fewer than all, of the Owners. The Exclusive Use Common Areas, if any, are shown and defined on the Condominium Plan for the Project.

As used herein, the term "Common Area" or "Common Areas" shall be deemed to include Exclusive Use Common Area unless otherwise specifically provided.

Section 15. Common Expenses. The actual and estimated expenses of the Association in performing its duties as set forth in this Declaration, the Articles, Bylaws, Condominium Plan and Rules and Regulations.

Section 16. Condominium.

A. A Condominium as defined in §1351f of the *California Civil Code* consisting of an undivided fee interest as tenant in common in all or a portion of the Common Area and a separate Condominium interest in a Unit, Exclusive Use Common Area, if any; and all appurtenance thereto. A Condominium may be a "Residential Condominium" or a "Retail Commercial Condominium" (hereafter sometimes "Commercial Condominium").

B. Reference in the Condominium Plan to dimensions for the living area or exclusive use areas of a Residential Condominium or the area of a Live/Work Unit or a Commercial Unit are approximate only and are not the true dimensions.

Section 17. Condominium Building or Building. A separate building containing one or more residential Units.

Section 18. Condominium Plan. Shall mean and refer to any plan prepared and executed in respect to the Project as required by §1351 of the *Civil Code of California*.

Section 19. Conveyance. Shall mean and refer to a conveyance of a Unit to a person, other than to the Declarant for residential use.

Section 20. Declarant. 1400 MISSION FREMONT, LLC, a Delaware Limited Liability Company, and its successors and assigns, if the rights of Declarant have been expressly assigned in writing or if a successor or assign is a mortgagee acquiring Declarant's interest in the Property by foreclosure or deed in lieu of foreclosure.

Section 21. Declaration. This Declaration, as the same may be amended from time to time, and recorded within the office of the County Recorder of the State of California where the Project is located.

Section 22. Deed of Trust. "Deed of Trust" shall mean a Mortgage as further defined herein.

Section 23. Dwelling. That part of an Owner's Condominium which is not owned in common with Owners of other Condominiums.

Section 24. Eligible Insurer or Guarantor. A guarantor or insurer of any First Mortgage or Deed of Trust on a Condominium, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Article XXII hereof.

Section 25. Eligible Mortgage Holder. The holder of a First Mortgage or Deed of Trust on a Condominium who has provided a written request to the Association to be notified of any proposed amendment or action described in Article XXII hereof.

Section 26. Family or Single Family shall mean one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related but who maintain a common household.

Section 27. FHA shall mean Federal Housing Association.

Section 28. FHLMC shall mean Federal Home Loan Mortgage Corporation.

Section 29. First Mortgage. A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

Section 30. FNMA shall mean Federal National Mortgage Association.

Section 31. Governing Documents. "Governing Documents" shall mean this Declaration, the Bylaws, the Articles, and any Rules and Regulations adopted by the Association.

Section 32. Grant Deed. A written instrument transferring title to real property.

Section 33. HUD shall mean Department of Housing and Urban Development.

Section 34. Improvements. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, Dwellings, walkways, driveways, fences, retaining walls, deck covers, awnings, the exterior surfaces of any visible structure, planted trees, shrubs, poles, signs, and exterior air conditioning and heating fixtures or equipment.

Section 35. Live/Work Unit. An integrated housing unit and working space, occupied and utilized by a single household in a structure, either single-family or multi-family, that has been designed or structurally modified to accommodate joint residential occupancy and work activity, and which includes:

(a) Complete kitchen space and sanitary facilities in compliance with the City building code; and

(b) Working space reserved for and regularly used by one or more occupants of the Unit.

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Section 36. Manager. The managing agent, if any, whether individual or corporate, retained by Declarant, or by the Board, on contract, and charged with the maintenance and upkeep of the Project.

Section 37. Member. Every person and entity who holds membership in the Association. Ownership of a Condominium in the Project shall be the sole qualification for membership in the Association. All memberships in the Association are hereby specifically made appurtenant to the Condominium, and memberships shall be effective immediately upon the recording of the grant deed transferring the Condominium ownership. Membership may not be separated from the ownership of any Condominium. Until such time as Declarant sells all of said Condominiums owned by it, Declarant shall remain a Condominium Owner as to the Condominiums owned by it, and shall be a Member of said Association.

Section 38. Mortgage. "Mortgage" shall mean any recorded Mortgage or Deed of Trust or other conveyance to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed", when used herein, shall be synonymous with the term "Mortgage".

Section 39. Mortgage-Mortgagee - Mortgagor and Institutional Holder. An Institutional Holder or Institutional Mortgagee is a "Mortgagee" to whom a Mortgage has been made which is a bank or a savings and loan association or established Mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

"Mortgagor" shall mean a person who Mortgages his or its property to another (i.e., the maker of a Mortgage). Reference to a Mortgagee shall be deemed to include the Beneficiary of a Deed of Trust; reference to a Mortgagor shall be deemed to include a trustor of a Deed of Trust.

Section 40. Notice and a Hearing. A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

Section 41. Occupant. An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

Section 42. Owner/Owners. Each person and entity or persons and entities, if more than one, holding record ownership interest in a Condominium, including contract vendees and including Declarant so long as any Condominium remains unsold but shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

Section 43. Project and Property. The entire parcel of real property hereinabove described in Recital A, including all structures thereon, divided or to be divided into Condominiums, said Project being known as MISSION COMMONS.

Section 44. Rules and Regulations. "Rules and "Regulations shall mean the Rules and Regulations of the Association adopted by the Board as the same may be amended from time to time.

Section 45. Unit. The elements of a Condominium that are not owned in common with the Owners of other Condominiums in the Project and which are more particularly designated and described as a Unit in the Condominium Plan for the Project. The boundaries of a Unit are as designated in said Condominium Plan. There shall be no restriction upon any Unit Owner's right of ingress and egress to his Unit which right shall be perpetual and appurtenant to the ownership of a Unit.

Section 46. VA shall mean the U.S. Department of Veterans Affairs.

Section 47. Vote. "Vote" shall mean the vote of the Members entitled to exercise the Voting Power of the Association at any duly held regular or special meeting of the Members of the Association.

Section 48. Voting Owner shall mean a Unit Owner or Owner described above in this Article I.

Section 49. Voting Power shall mean and refer to the Voting Power of the Members of the Association.

ARTICLE II

Description of Land and Improvements

The Property initially subject to the covenants, conditions and restrictions herein contained is located in the City of South Pasadena, County of Los Angeles, State of California according to the Condominium Plan recorded in the Office of the County Recorder of said county as the same may be amended or superseded from time to time (and is hereinafter referred to as said Condominium Plan). Any grant deeds conveying any interest in the Project to individual purchasers of Condominiums shall expressly refer to and incorporate this Declaration therein by reference. Whether or not a reference to this Declaration is made in any individual deed, each purchaser of a Condominium, part or portion thereof, shall by acceptance of a deed or other conveyance for such Condominium, part or portion thereof, thereby be conclusively deemed to have consented to and agreed to all of the covenants, conditions and restrictions contained herein for himself and his heirs, executors, administrators and assigns and does by said acceptance covenant for himself and his heirs, executors, administrators and assigns to observe, perform and be bound by the same.

All sixteen (16) Residential Units (including the five (5) Live/Work Units) and six (6) Retail Commercial Units are contained in one (1) building which is three (3) stories in height over a subterranean garage.

All of the Residential Condominiums, except the Live/Work Units are two (2) stories in height and have balconies. The Live/ Work Units and Retail Commercial Units are each

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one (1) story in height. Two of the Residential Condominium contained one (1) bedroom and one and one-half (1-½) bathrooms and nine (9) of the Residential Condominiums contain two (2) bedrooms and either two (2) or two and one-half (2-½) bathrooms. The Live/Work Condominiums all contain one (1) bedroom and one (1) bathroom. The Residential Condominiums range in size from approximately 1,300 square feet to approximately 1,550 square feet and the Live/Work Units are approximately 850 square feet.

Common elements include green belt areas, hardscape areas, elevator, subterranean garage/electric entry gate and courtyard.

The building is constructed of wood and stucco with a part flat and part concrete tile roof and is contemporary in architectural style.

Each Owner has an undivided one twenty-second (1/22nd) interest in the Common Area of the Project.

ARTICLE III

Board of Directors

Section 1. Number and Term. The management of the Project and the Association shall be governed by a Board of Directors consisting of three (3) persons, who need not be Owners of Condominiums in the Project until conversion of Class B membership to Class A, after which time all Directors must be Owners of Condominiums in the Project, or the nominee of any corporate or partnership Owner.

The number of members of the Board and their term of office may be changed by an amendment to the Bylaws of the Association.

Section 2. Cumulative Voting. The Voting Owners shall vote for the election of the Board. Each Owner shall be entitled to cumulate his votes for one or more candidates to the Board of Directors if the candidate's name or candidates' names have been placed in nomination prior to the voting and if the Owner has given notice at the meeting prior to the voting of his intention to cumulate his votes. If any one Owner has given such notice all members may cumulate their votes for the candidates in nomination. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. All voting at elections shall be by secret ballot.

Section 3. Removal of Directors. The entire Board of Directors or any individual Director may be removed by a vote of the Voting Owners holding a majority of the Voting Power entitled to vote at any election of Directors. Unless the entire Board of Directors is removed from office, no individual Director shall be removed prior to the expiration of his term of office if the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such 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 Board of Directors were then being elected. If any

Director is removed in the manner authorized above, a new Director may be elected at the same meeting.

Section 4. Majority of Voting Power in Declarant. Notwithstanding anything to the contrary contained herein or in the Bylaws or in the Articles of Incorporation: (a) from the first election of the Board of Directors and thereafter for so long as a majority of the Voting Power of the Association resides in Declarant, or so long as there are two classes of membership in the Association, twenty percent (20%) but not less than one (1) of the incumbents on the Board of Directors shall be elected solely by the votes of Owners other than Declarant; and (b) a Director who has been elected to office solely by the votes of Owners other than Declarant may be removed from office prior to the expiration of his term solely by the vote of a majority of the Voting Power residing in Owners other than Declarant.

Section 5. Interim Board. Declarant shall appoint an interim Board to govern the Project, which Board shall have the same rights, privileges, duties and characteristics as detailed in the Declaration and the Articles and Bylaws of the Association, and which interim Board shall serve at the pleasure of the Declarant until the first annual meeting of the Association when the Members shall elect directors as provided in the Bylaws of the Association. Interim directors are not required to be Owners.

ARTICLE IV

Voting Rights

Section 1. Voting Classes. The Association shall have two classes of voting membership according to the following provisions:

Class A. Each Owner of a Unit other than Declarant shall be a Class A member and shall be entitled to one (1) vote for each Unit owned.

Class B. Declarant shall be a Class B member. Class B membership entitles the holder to three (3) votes for each Residential Unit and for each Commercial Unit. Class B Membership shall be irreversibly converted to Class A Membership on the first to occur of the following:

A. The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member.

B. Two (2) years from the date of the first conveyance of a Residential Condominium in the Project.

Section 2. Commencement of Voting Rights. Voting rights shall commence for each Condominium at such time as the first Unit has been conveyed to a purchaser; provided, however, that assessments have been levied against that Condominium by the Association. Notwithstanding the foregoing, if assessments are deferred pursuant to a subsidy agreement or a maintenance agreement to be entered into between the Declarant and the Association, the same shall not prevent the commencement of voting rights subject

to the subsidy and/or maintenance agreement. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and any Rules and Regulations governing the Project.

Any provision in the governing instruments calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Except with respect to the action to enforce the obligations of Declarant under any completion bond, any requirement in the governing instruments that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B members to Class A members, and the same shall be read as requiring the prescribed percentage of the Class A members and the prescribed percentage of the Class A members other than Declarant.

Section 3. Joint Owner Disputes. Each Owner shall designate one Voting Owner. There shall be only one Voting Owner for each Condominium. The Voting Owner shall be designated by the record Owner or Owners of each Condominium, by written notice to the Association, or the Manager. Said designation of a Voting Owner of a Condominium shall be revocable at any time by actual notice to the Association or the Manager, of the death or judicially declared incompetence of any record Owner, or by written instrument delivered to the Manager by any record Owner. Where no designation is made or where a designation has been made but is revoked and no new designation made, the Voting Owner of each Condominium shall be the group composed of its record owners. If the joint Owners are unable to agree as to how their vote 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 he was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void. Declarant shall be the Voting Owner with respect to any Condominium owned by it from time to time.

Section 4. Voting. Subject to rights of cumulative voting, at any meeting of the Association, each Owner, excluding Declarant, shall be entitled to cast one (1) vote for each Unit owned by said Owner. Declarant shall, subject to the provisions of Article IV §1, be entitled to cast three (3) votes for each Condominium which it owns. Any Owner may attend and vote at such meeting in person, or by agent duly appointed by an instrument in writing signed by the Owner and filed with the Board. Any such appointment may be revoked at any time by written notice of the Owner of any Unit.

ARTICLE V

Management and Administration

Section 1. Administration of Project. The management and administration of the Project shall be in accordance with this Declaration, the Articles of Incorporation, the

Bylaws of the Association and any Rules and Regulations governing the Project as the same may be amended from time to time.

Section 2. First Meeting of Owners. The first organization meeting of the Owners shall be held within forty-five (45) days after consummation of the sale of the Residential Condominium in the Project which represents the 51st percentile of all Residential Condominiums under the first public report for the Project, provided that the first public report authorizes the sale of fifty Condominiums or more in the Project. However, regardless of the number of Units, in no event shall the first meeting be held later than six (6) months from the transfer and conveyance of the first Residential Condominium in the Project without regard to the number of Condominiums authorized for sale in the first public report. Thereafter, annual meetings of such Owners shall be held in accordance with the Bylaws of the Association.

Section 3. Duties and Powers. After the sale of the first Unit in the Project and prior to the first meeting of Members, and thereafter until their successors are elected, the initial Board elected by Declarant, or their duly appointed successors, shall manage the affairs of the Association and the obligations and debts incurred in connection therewith shall be those of the Association. The Board of Directors as a whole shall at all times be responsible for the day to day operation and management of the affairs of the Association, and the maintenance, repair and replacement of the Common Areas, including all facilities and landscaping therein. The Board shall have the sole power and duty to perform and carry out the powers and duties of the Association as set forth in this Declaration and the Bylaws, together with the powers and duties otherwise expressly delegated to the Board by this Declaration or the Bylaws, except for action or activity expressly set forth herein or in the Bylaws, the Articles, or the California Corporations Code as requiring the vote or assent of the Members of the Association or a given percentage thereof. Without limiting the generality of the foregoing, the Board shall have the following rights, powers and duties in dealing with matters with which the Board is responsible:

A. Employ the services of personnel necessary to operate and maintain the Project, fix and pay their compensation, and oversee and control such management and otherwise delegate its powers to committees, officers and/or employees.

B. Contract and pay for the Common Expenses and such labor and materials as may be reasonably required to maintain the Common Area to provide lateral support therefor and prevent and correct erosion thereof.

C. Acquire and maintain and pay for any required services such as: water, sewer, refuse collection, electrical, telephone and gas, and other necessary utility services for the Common Area and for the Units, if not separately metered, as well as maintenance for the Common Areas.

D. Enforce the applicable provisions of the Declaration, Bylaws, Rules and Regulations and other instruments for the management and control of the Project.

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E. Pay all taxes, charges and assessments levied or which could become a lien against the Common Area (except for charges levied solely against an Owner and/or the undivided interest of an Owner, which charges shall be paid by such Owner).

F. Use, in the discretion of the Board, the funds paid by Owners as maintenance charges, for maintenance of the Project.

G. Provide financial statements of the Association to Owners as provided in the Bylaws of the Association.

H. Enter any living area, or any portion of the Common Area or Exclusive Use Common Area, when necessary, in connection with any maintenance or construction for which the Board is responsible.

I. Contract and pay for fire, casualty, liability and other insurance on behalf of the Association as hereinafter provided.

J. Hire and pay for legal and accounting services necessary or proper in the operation of the Project or enforcement of these restrictions, the Bylaws, Articles and any Rules and Regulations governing the Project.

K. Except as herein otherwise provided, paint, maintain, repair, landscape, keep in good condition and repair the Common Area and equipment and Improvements thereon, including all appurtenant exclusive easements forming a part of any Condominium, exterior walls, roof, and all facilities, Improvements and landscaping therein and acquire and maintain such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper. The Board shall exercise such authority and perform such duties on behalf of the Owners with a view toward preserving the attractiveness of the Project as a whole and maintaining, insofar as may be practicable, the architectural style established by Declarant. It is further understood that each Owner shall have the primary obligation to paint, maintain and repair the interior of his Unit subject to the restrictions and provisions provided for herein, but if he fails to do so, the Association may, but shall not be required to, effect the repair or maintenance thereof and charge the costs thereof to the defaulting Owner; provided, however, that the Association may not effect such repair or maintenance unless the Board shall first give notice of such intent to the Owner and the Owner shall have an opportunity for hearing before the Board and the Board shall approve the proposed repair or maintenance by a two-thirds (2/3) vote. Except for any damage caused by an Owner or Owners, or members of his family, his tenants, guests, or invitees, no Owner shall have any obligation with respect to maintenance and repair of any portion of the Common Areas or any Unit of another Owner. Residential Owners shall be obligated to maintain their balconies in a clean and neat condition and the Association shall be obligated to paint, repair and waterproof the same unless the need therefore is caused by the Owner, members of his family or invitees in which event the Owner shall be obligated to pay the cost thereof.

L. Provide, acquire and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or

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assessments which the Board may be required to secure to pay for pursuant to the terms of these restrictions, or Bylaws, or which the Board in its opinion shall deem necessary, proper, or convenient for the operation of the Project, provided that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for a single Unit or only several but not all Units, the cost thereof shall be specifically assessed to the Owner or Owners of such Units.

M. Pay any amount necessary to discharge any lien or encumbrance levied against the Project, or any part thereof, which may, in the opinion of the Board, constitute a lien against the Project, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it.

N. Until such time as property taxes are separately assessed to each individual Owner, the Board may pay such property taxes singly assessed against the Project as a whole and collect the same from each Owner pro rata based on each Owners respective percentage share of Regular Monthly Assessments attributable to the Common Area.

O. Comply with all applicable laws and orders and directives of any lawful authority.

P. The Board and Declarant are hereby precluded from taking any of the following actions except with assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the Members other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the Voting Power of the Association residing in Members other than Declarant:

(1) Entering into a contract with a third person where the third person will furnish goods or services for the Project or the Association for a term longer than one (1) year, with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(b) 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.

(c) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.

(d) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the

agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(e) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(f) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%), or more.

(g) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(h) Such other contracts which may from time to time be permitted by the regulations of the Real Estate Commissioner of the State of California.

Notwithstanding the foregoing, any agreement for professional management of the Project, or any other contract providing for services by the Declarant, Sponsor or Builder, may not exceed one (1) year and must provide for termination by either party, without cause, and without payment of a termination fee on thirty (30) days, or less, written notice.

(2) Incurring aggregate expenditures for capital improvements to the Project in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling, 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) Paying compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board of Directors may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Q. Receive complaints and hold hearings concerning violations of this Declaration, the Bylaws and/or other Rules and Regulations governing the management and control of the Association and the Project. The Board shall have the right to suspend the voting rights and right to use of the recreation facilities, if any, of an Owner for any period during which any assessment against his interest in the Project remains unpaid and delinquent. The Board may also impose monetary penalties and/or suspend the voting rights and right to use of the recreational facilities, if any, for any other infraction

of this Declaration or the Bylaws or the Rules and Regulations of the Association. All procedures for notice and hearing to the accused Owner pursuant to this paragraph Q shall be as set forth herein and in the Bylaws of the Association. A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the Declaration, or Bylaws, or Rules and Regulations of the Association or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage of Common Areas and facilities for which the member was allegedly responsible, or in bringing the member and his interest in the Project into compliance with the aforescribed governing instruments, may not be characterized nor treated as an assessment which may become a lien against the member's interest in the Project enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the *Civil Code*.

R. Grant and convey to any third party permits, licenses, easements and rights of way in, on, over or under the Common Areas for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, and each purchaser, in accepting a deed to a Condominium, expressly consents to the granting of the same. However, no such easements may be granted if it would interfere with the use, occupancy or enjoyment by any Owner of his Condominium, any exclusive use easements over any Common Area appurtenant to the Condominium, or any recreational facilities of the Project.

S. Within ten (10) days of the mailing or delivery of a written request by an Owner, prospective purchaser of a Condominium, any First Mortgagee or the holders, insurers or guarantors of a First Mortgage on any Condominium the Board shall provide such requesting party with a copy of this Declaration and the Association's Bylaws, Articles, Rules and Regulations and all other books, records and financial statements of the Association. The Board shall also make available to a requesting party a true statement in writing as to the amount of any delinquent assessments, penalties, attorneys fees and other charges due and owing from the Owner in connection with his Unit as of the date of the request. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

T. Borrow and incur indebtedness for the benefit of the Association and to cause execution and delivery in the Association's name of promissory notes, bonds, debentures, deeds of trust, Mortgages, pledges, or other evidence of indebtedness or security therefor.

U. Permit utility suppliers to use portions of the Common Areas reasonably necessary for the ongoing development and operation of the Project.

V. Except as otherwise provided in Article XXIX, institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation or

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administrative proceedings in matters pertaining to: (a) enforcement of the Governing Instruments; (b) damage to the Common Areas; (c) damage to the separate interests which the Association is obligated to maintain or repair; or (d) damage to the separate interests which arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair.

W. Maintain all records, plans, reports and the like which Declarant has provided to the Board (i.e., manufacturer's warranties, maintenance manuals, building plans, soils reports, etc.) and make them available to an Owner upon request.

X. Maintain the Property clean and free of debris and rubbish and promptly remove any graffiti on any portion of the Project or paint over the graffiti to match the color of the surface to which it is applied.

Y. Inspect the sump pump in the subterranean garage not less than once every year and maintain and repair the same when necessary, including changing the filter.

Z. Wash the exterior of the windows in the Buildings except an Owner of a Residential Condominium shall be required to wash the exterior of the windows leading to his balcony.

AA. Maintain and repair the trash chute as required and clean the same not less than one (1) time each three (3) months.

Section 4. Personal Liability. No Member of the Board or of any committee of the Association, or any officer of the Association, or the Declarant, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager or any other representative or employee of the Association, the Declarant, or the Architectural Committee, if any, or any other committee, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

Section 5. Indemnification for Performance of Duties. Every Member of the Board of Directors, officer and Member of the Association shall, to the fullest extent permitted by law, be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorneys fees) actually or necessarily incurred by, or imposed upon him, in connection with any claim, action, suit, proceedings, investigation or inquiry, of whatever nature, in which he may be involved as a party, or otherwise, by reason of his having been an officer or Member of the Association, or the Board of Directors whether or not he continues to be such Director, officer, or Member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall finally be adjudged in such action, suit, proceeding, investigation, or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing

right of indemnification shall be in addition to and not in limitation of, all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such persons.

In the event the Association is required to pay any such costs, expenses, or liabilities, the Association shall be entitled to assess all Owners for the amount so expended in the manner hereinafter provided for special assessments and such assessments need not be first approved by the vote of the Owners.

Section 6. Certificate of Board of Directors. Any certificate executed by any two (2) Directors shall be conclusive proof of all matters contained in the certificate as to any act or non-act of the Association and/or the Board or any of its committees or agents, or as to the performance or non-performance of any act of any Owner, or nonpayment or payment of any dues, fees, charges, assessments, interest, costs, or penalties, or as to any matters contained in the records of the Association or said Board. A reasonable charge may be imposed for the issuance of each Certificate.

Section 7. Association Rules and Regulations. Except as herein otherwise provided in Section 8 of this Article V, the Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which shall govern matters in furtherance of the purposes of the Association, including without limitation, the use of the Common Areas, signs, parking restrictions and enforcement, control of pets, storage, trash collection, minimum standards for maintenance of Units consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Such rules may provide that the Owner whose occupants leave property on the Common Areas in violation of the rules, or who otherwise violate the rules in any manner may be assessed to cover the expense incurred by the Board, in removing such property and storing or disposing thereof or may be fined for violation of the rules after a hearing upon notice and a two-thirds (2/3) approval of the Board. The Board may provide in such rules for reasonable rental charges to be made with respect to the use of any storage areas or facilities which may exist upon the Common Areas (but which are not a part of an Owner's Exclusive Use), provided that such charge shall in no way, impose liability upon the Board or any of its members for damages or loss to property so stored, it being intended that the use of any such storage area or facility be solely at the risk of the person using the same. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules and Regulations shall be deemed to be superseded.

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Section 8. Restrictions Involving Commercial Condominiums. Notwithstanding anything contained in this Declaration to the contrary, without obtaining the written consent or written approval of a majority of the Voting Power of the Commercial Owners, the Board may not enact or adopt any rule, regulation, standard or criteria which attempts to restrict or regulate: (i) signage for the Commercial Condominiums; (ii) hours of business operation; (iii) types and uses of businesses (except as provided herein); (iv) architectural or design features of the Commercial Condominiums including store fronts, lighting, glazing, canopies, awnings and Commercial Exclusive Use Common Areas, if any; (v) access over easements granted in the Common Area for the benefit of the Commercial Condominiums; (vi) Rules and Regulations pertaining to the Commercial Condominiums; (vii) Commercial Parking Spaces; (viii) Loading dock area; or (ix) otherwise enact or adopt any rule or regulation which attempts to regulate, restrict or impose any condition on the use of the Commercial Condominiums. The Residential Condominium Owners and Live/Work Condominium Owners may not amend or delete any provision of this Declaration or the Bylaws which is for the benefit of the Commercial Condominiums.

Section 9. Common Areas.

A. Commencement of Association Responsibilities. The Association's responsibility to maintain the Common Areas shall commence concurrently with the commencement of Regular Monthly Assessments, subject to the terms and provisions of any subsidy or maintenance agreement which may have been entered into by and between Declarant and the Association. Notwithstanding the foregoing, the contractors or subcontractors of Declarant may be contractually obligated to maintain the landscaping or other improvements on the Common Areas for a specified period of time. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Monthly Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Monthly Assessments.

B. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of any of the improvements in the Project, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Common Area and undertake maintenance responsibilities pending resolution of the dispute by binding arbitration as hereafter provided.

ARTICLE VI

Maintenance Assessments and Capital Contributions

Section 1. Creation of Lien and Personal Obligation of Owners. Declarant, for each Condominium owned by it within the Project, hereby covenants, and each Owner of any Condominium within the Project, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Regular Monthly Assessments or charges which shall include an amount necessary to establish an adequate reserve fund for maintenance, repairs and replacement of Common Area Improvements; (2) Special

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Assessments for installation, construction or reconstruction of any capital improvements and emergencies; and (3) Compliance Assessments which are levied against an Owner, or group of Owners, but less than all Owners, for monetary obligations or liabilities of an Owner or Owners (other than Regular and Special Assessments) due in accordance with the management documents of the Association, such assessments to be fixed, established and collected from time to time, as hereinafter provided. Each such assessment (and all other assessments levied in accordance with this Declaration), together with late charges, interest, costs, penalties and reasonable attorneys fees, as provided for by this Declaration, shall be the joint and several personal obligation of each person who was an Owner of such Condominium at the time the assessment fell due. The personal obligations for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, for the improvement, maintenance, operation, replacement and repair of the Project in a first class condition related to the use and enjoyment of the Project, and to the extent provided for herein, of the Condominiums situated in the Project. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

Section 3. Regular Monthly Assessments. Regular Monthly Assessments shall commence for all Units, including those owned by Declarant, commencing on the date of the first conveyance of an interest in the Common Areas of the Project and, thereafter, shall be due and payable in advance on the first day of each month, without notice.

Section 4. Special Assessments.

A. 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, emergency situations, unanticipated delinquencies, costs of construction, reconstruction, unexpected repairs, replacement of or new capital improvements, the Board shall determine the approximate amount necessary to defray such expenses and, except as limited in the Bylaws, said amount shall become a Special Assessment to the Owners.

B. An "emergency situation" includes the following:

- (1) An extraordinary expense required by an order of a court;
- (2) Restoration of funds transferred from any Reserve Fund to be the applicable Operating Fund, as required by §1365.5 of the *California Civil Code*.
- (3) An extraordinary expense necessary to repair or maintain the Project or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered; or

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(4) An extraordinary expense necessary to repair or maintain the Project or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget, or the summary thereof, pursuant to §1365 of the *California Civil Code*. Prior to the imposition or collection of an Assessment pursuant to this subparagraph, Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.

Section 5. Special and Compliance Assessments. Special and Compliance Assessments shall be due and payable in full thirty (30) days after appropriate notice thereof has been given to the Owners unless otherwise provided by the Board.

Section 6. Rate of Assessments.

A. Regular Monthly Assessments shall be paid by the Owners in the manner set forth in the initial budget of the Association.

B. Special Assessments shall be assessed to Owners in the same manner as Regular Monthly Assessments, except Special Assessments to raise funds for the rebuilding or major repair of structural portions of the Common Area shall be assessed on the ratio of the square footage of the floor area of the Unit to be assessed to the square footage of the floor area of all Units to be assessed.

C. Compliance Assessments shall be assessed in full only against the Owner(s) liable therefor. The Board shall have the right after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code as provided in the Bylaws, to establish a Compliance Assessment on a single Owner or group of Owners, if the same be required to secure or satisfy any breach of this Declaration, the Articles, Bylaws or Rules and Regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Board for repair or remedy, including but not limited to, the violation of, or failure of such Owner to comply with any applicable laws or directives of any lawful authority.

Section 7. Change of Regular Monthly Assessments and Special Assessments. Changes in Regular Monthly Assessments and Special Assessments may be made only as provided herein, or by the Bylaws subject to the Regulations of the California Department of Real Estate and the laws of the State of California.

Section 8. Notice of Change in Assessments. The Board of Directors shall provide notice by first class mail to the Owners of a Unit of any increase in the Regular or Special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 9. Bank Accounts. Assessment charges so collected shall be promptly deposited in a bank or savings account, in a bank or savings and loan association to be selected by the Board, which account or accounts shall be under the name of the Association. The Board, and any officer of the Association or other person or firm

designated by the Board, shall have exclusive control of said account or accounts, and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from any of said accounts except to pay for the charges and expenses or otherwise provide for the common benefit of all Owners.

The Board shall establish two (2) separate accounts into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. Each of the accounts shall be established as a separate savings or checking account at a bank or savings institution. The accounts shall include: (i) an operating fund for current common expenses of the Association, and (ii) a fund for reserves for capital Improvements, replacements, painting and repair of the Common Areas (which cannot normally be expected to occur on an annual basis). The Board shall not commingle any amounts deposited into either of the above accounts with one another. Nothing contained herein shall limit, preclude, or impair the establishment of additional maintenance funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such fund are earmarked for specified purposes authorized by this Declaration.

Section 10. No Offsets. All assessments shall be payable in the amount specified in the notice of assessment and no offsets against such amount shall be permitted for any reason.

Section 11. Maintenance and/or Subsidy Agreement. In the event that Declarant has entered into a subsidy agreement or a maintenance agreement with the Association, which has been approved by the California Department of Real Estate, Regular Monthly Assessments may be reduced and/or abated in accordance with such agreements.

Section 12. Declarant's Obligation to Pay Assessments - Record Maintenance. The Declarant shall maintain or cause to be maintained in accordance with generally accepted accounting practices, records of:

A. All assessments paid by Declarant to the Association as an Owner of subdivision interests in the Project.

B. All expenditures claimed by Declarant as offsets or credits against assessments owed.

C. Association receipts, expenditures and disbursements if Declarant has not turned over such records to the Association.

Such records shall be made available for examination, inspection and copying by the California Commissioner of Real Estate or his or her designated representative upon request during regular business hours. The Declarant's obligation to maintain or cause to be maintained, the records described in A, B or C shall terminate upon the earlier of (i) the conveyance of the last subdivision interest in the Project covered by a Subdivision Public Report; or (ii) three (3) years after the expiration of the most recent Public Report on the subdivision.

Section 13. Assessments - Debt of Owner. Each Owner shall be given written notice of all assessments against his Unit and the date upon which assessments are payable. All assessments shall be the personal debt of the Owner assessed, including Declarant. Personal liability for assessments shall be prorated to the date upon which the ownership of a Unit is transferred as evidenced by recording of documents of transfer, if such documents are recorded. No transfer of ownership shall have any effect upon the assessment lien provided for herein.

Section 14. Capital Contributions. Upon the close of escrow for the initial sale of each Condominium in the Project, the buyer of such Condominium shall be required to contribute to the capital of the Association an amount equal to two (2) Regular Monthly Assessments. The contribution is for the purpose of providing a startup fund for the Association and is not in lieu of or a reduction of, Regular Monthly Assessments required to be paid by the Owners.

ARTICLE VII

Liens

Section 1. Notice of Assessments

A. Notice of the amount of any special assessment imposed by the Association shall be mailed to each Owner not less than thirty (30) days prior to the date the assessment or charge becomes due and payable.

B. The Association shall provide notice by first class mail to each Owner of any increase in the general or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 2. Default; Late Charge; Interest. Fifteen (15) days after any general or special assessment is due and payable, but remains unpaid or not otherwise satisfied, it shall be and become delinquent and shall so continue until the amount of the assessment, together with all costs, late charges and interest as herein provided, have been fully paid or otherwise satisfied. The Board may establish a reasonable charge for late payment of any assessment to defray the additional administration costs a late payment may cause, subject to the limitations as set forth in Civil Code Section 1366(e)(2), which currently provides that a late charge shall not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater. Such late charges may be imposed at any time after any assessment has become delinquent. Interest shall accrue at the rate of twelve percent (12%) per annum upon all unpaid assessments commencing thirty (30) days after the assessment becomes due.

Section 3. Notice of Delinquency. At any time after any general or special assessment against a Condominium has become delinquent, the Association may record a lien for delinquent assessments (a "Lien") as to such Condominium; provided, however, that at least thirty (30) days before recording the Lien, the Association shall have provided

the Owner of such Condominium, in writing, by certified mail, with all of the information required pursuant to California Civil Code Section 1367.1(a) (a "Notice of Delinquency").

Section 4. Lien for Delinquent Assessments. On or after thirty (30) days from the delivery of a Notice of Delinquency, as described in Section 3 above, the Association may record a Lien as to such Condominium.

A. Immediately upon the recording of a Lien, the amount of the delinquent assessments, plus any costs of collection, late charges, and interest assessed in accordance with California Civil Code Section 1366, shall become a Lien on the Owner's Condominium, which Lien shall continue until the amount of such delinquency and the interest, costs and late charges accrued thereon have been fully paid or otherwise satisfied or the Lien foreclosed as provided therein. The recorded Lien shall include all information required pursuant to California Civil Code Section 1367.1(d).

B. Such Lien shall be signed by an Officer and a copy thereof shall be mailed, by certified mail, to every Owner no later than ten (10) calendar days after recordation. The decision to record a Lien shall be made only by the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting of the Board. The Board shall record the vote in the minutes of that meeting.

C. In addition to the requirements of this Section 4, notice of a recorded Lien shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons described in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure.

D. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section 4 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to California Civil Code Section 1365. An Owner's request identifying a secondary address for purposes of collection notices shall be in writing and shall be mailed to the Association in a manner provided herein for Notices. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

E. An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquency. The Association shall provide Owners with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the date of the postmark of the Owner's notice. If there is no regularly scheduled Board meeting within that period, the Board may designate a committee of one or more members to meet with the Owner.

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F. Any payments received shall first be applied to the assessments owing, and then to the fees and costs of collection, attorneys' fees, late charges and interest. When an Owner makes a payment, he/she may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

G. Within twenty-one (21) days of the payment of the sums specified in a recorded Lien, or upon other satisfaction thereof, the Association shall record, or cause to be recorded, a Lien release or notice of rescission and provide the Owner with a copy of the Lien release or notice that the delinquent assessment has been satisfied. The foregoing procedures and the provisions of the remainder of this Article, insofar as they relate to creation of a Lien against a Condominium and the enforcement thereof by the sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b), 2924(c) and 2934(a) of the California Civil Code, are inapplicable in the instance of any enforcement of special assessments made pursuant to the provisions of this Declaration.

Section 5. Enforcement of Lien; Attorneys' Fees. Except as otherwise provided in *Civil Code* Sections 1367.1(g), each Lien created pursuant to the provisions of this Declaration may be enforced in any manner permitted by law, including sale by the court, the Association, the trustee or other person authorized to make the sale after the expiration of thirty (30) days following recording of the Lien; provided, however, that, pursuant to Civil Code Section 1367.4(b)(1), a Lien in an amount less than One Thousand, Eight Hundred Dollars (\$1,800.00), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not be enforced through judicial or nonjudicial foreclosure until: (i) the amount of the delinquent assessments secured by the Lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds One Thousand, Eight Hundred Dollars (\$1,800.00); or (ii) the assessments secured by the Lien are more than twelve (12) months delinquent.

A. The decision to initiate foreclosure of a Lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Owners. The Board shall maintain the confidentiality of the Owner of the Condominium subject to foreclosure by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner. A Board vote to approve foreclosure of a Lien shall take place at least thirty (30) days prior to any public sale.

B. Prior to initiating foreclosure of a Lien the Association shall offer the Owner and, if so requested by the Owner, the right to participate in dispute resolution procedures as described in the Bylaws.

C. The sale of a Condominium pursuant to this Section 5 may be conducted in accordance with the provisions of Sections 2924, 2924(b), 2924(c) and 2934(a) of the California Civil Code, or in any other manner permitted by law. The Association may bring separate legal action to collect delinquent assessments without

foreclosing such Lien and before the Association has recorded a Lien. In any action to collect delinquent assessments or to foreclose any Lien, the Association shall be entitled to costs, including reasonable attorneys' fees as determined by a court of competent jurisdiction, interest, and such late charges for delinquent assessments as shall have been established by the Board. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by him.

D. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption pursuant to California Civil Code Section 1367.4(c)(4). The redemption period within which a Condominium may be redeemed from a foreclosure sale by the Owner will end ninety (90) days after the sale.

E. To facilitate collection of such delinquent assessments, fees and charges, the Association may record a statement of relevant information pursuant to Civil Code Section 1366.2.

Section 6. Assessments and Liens Subordinated. Each and every Lien and assessment, together with any costs, late charges or interest established, reserved or imposed under this Declaration, shall be subordinated to any valid bona fide First Mortgage or first trust deed (and the Lien or title thereto) which has been or may hereafter be given in good faith and for value on any Condominium or property covered by this Declaration; provided, however, that any subsequent owner of any such Condominium shall be bound by the restrictions, conditions, covenants, reservations, Liens and charges set out in this Declaration or any modification thereof, whether obtained by foreclosure or trust deed sale or otherwise, not including, however, any Lien or assessment arising prior to any sale under any such Mortgage or trust deed.

Section 7. Payment of Taxes. The Association shall have the right, to the extent not paid by the Owners, to pay all real property taxes and assessments levied upon any part or portion of the Project by a duly authorized governmental or quasi-governmental authority. The Association shall have the right to impose a Special Assessment and Lien against such portion of the Project for the amount paid by the Association pursuant to the right given by this Section 7. Such assessment and Lien imposed by the Association shall be enforced as provided in this Article.

Section 8. Statutory Compliance. It is the intent of Declarant that the above Project relating to prior notice, recordation and foreclosure of Liens against Condominiums in the Development be in compliance with applicable provisions and requirements of the Davis-Stirling Common Interest Development Act and other applicable statutes and regulations of the State of California. However, such statutory requirements are subject to change and the Board and Owners should regularly refer to such authorities (in particular Sections 1367.1-5 of the California Civil Code, as amended) when providing Notices of Delinquency, and when recording or foreclosing Liens on any Condominium in connection with such delinquent assessments, in order to ensure that all such notices, recorded Liens and procedures relating to such Liens are in full compliance with applicable law.

Section 9. Alternate Legal Action; Settlement. Nothing in this Article shall prohibit actions by the Association against any Owner to recover sums specified in a Notice of Delinquency or sums for which a Lien is created, or from taking a deed in lieu of foreclosure.

Section 10. Prohibition Against Assignment. The Association may not voluntarily assign or pledge its right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former member to a third party for purposes of collection.

Section 11. Lien Recorded in Error. If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within twenty-one (21) calendar days after discovery, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

Section 12. Failure to Comply. If the Association fails to comply with the procedures set forth in §1367.1 of the *Civil Code*, the Association shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Condominium.

Section 13. Additional Remedies. Such Lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Owners and the Board may have to enforce the provisions hereof.

ARTICLE VIII

Insurance

Section 1. Public Liability and Errors and Omissions Insurance. Comprehensive public liability insurance shall be purchased by the Board and shall be maintained in effect at all times, insuring the Association, any Manager, the Declarant and the Owners and occupants of Condominiums and their respective family members, guests, invitees, and the agents and employees of each, and all holders of first deeds of trust encumbering the Condominiums within the Project, against any liability incident to the ownership or use of the Common Areas and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of each of such insurance policies shall not be less than \$2,000,000 covering all claims arising out of a single occurrence.

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The Association shall also obtain insurance coverage for negligent acts or omissions of those persons acting in their capacity as officers and directors. The limits of such insurance shall be not less than \$500,000.

Comprehensive public liability insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

The Board shall, upon issuance or renewal of the insurance specified in this Section 1, but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is, or is not, insured to the levels specified by this Section, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified in this Section, then Owners may be individually liable only for their proportionate share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

Section 2. Fire, Extended Coverage and Earthquake. A master or blanket policy of fire insurance for one hundred percent (100%) of current replacement cost of all of the Improvements within the Common Area of the Project (excluding land, foundation and excavation) shall be purchased by the Association and shall be maintained in effect at all times. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional Mortgagees. If more than one institutional Mortgagee has a loan of record against the Project, or any part of it, the policy and endorsements shall meet the maximum standards of the various institutional Mortgagees represented in the Project. The policy shall contain an Agreed Amount Endorsement or its equivalent – an Inflation Guard Endorsement, if available, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement, a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the Improvements in case of partial destruction and a decision not to rebuild, a severability of interest provision, cross liability endorsement and waiver of subrogation as to the Association and its officers, directors, members, guests, agents and employees. Earthquake coverage need not be included unless requested in writing by a majority of institutional Mortgagees or by Owners owning a majority of the Condominiums in the Project. The policy or policies shall be in the amounts as shall be determined by the Board. The policy shall name as insured the Association, for the use and benefit of the Owners and the Declarant, as long as Declarant is the Owner of a Condominium and all institutional Mortgagees as their respective interests may appear, and shall contain a loss payable endorsement in favor of the Trustee or the Board, as applicable. All policies shall contain such other endorsements and be in such form as shall meet the requirements of any Eligible Mortgage Holder and the guarantor, insurer or subsidizer of any Eligible Mortgage Holder.

Section 3. Proceeds Payable to Trustee. All insurance proceeds payable under Section 2 shall be paid to the Association, as Trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear

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pursuant to the Article herein relating to "Destruction of Improvements". The policy must also contain the standard Mortgage clause and name as Mortgagee, if applicable, either Federal National Mortgage Association ("FNMA") or the servicers for FNMA Mortgages or its successors and assigns. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

Notwithstanding the foregoing, if the proceeds from a single claim do not exceed Fifty Dollars (\$50,000) such proceeds shall be paid to the Association to be used for repair and reconstruction. If the Board fails to appoint a Trustee, the proceeds shall be paid to the Association and the Board shall administer the disposition of the proceeds.

Section 4. Insurance by Owner.

A. Except as provided in this Section 4, no Owner may separately insure his Unit or any part of it against loss by fire or other casualty covered by an insurance carrier under the fire and extended coverage insurance policy carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 2 that result from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and the Owner will be liable to the Association to the extent of any such diminution. An Owner shall have the responsibility to insure his personal property against loss and, in addition, any Improvements made by an Owner to the real property within his Unit, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association and Declarant. An Owner may also carry public liability insurance covering his individual liability for damage to persons or property occurring within his Unit.

B. Notwithstanding any other provision herein, each Commercial Owner shall be obligated to obtain and maintain (or cause tenants leasing all or any part of any Commercial Condominium to obtain and maintain) commercial general liability insurance for liability to patrons and Owners of all other Condominiums in the Project, other tenants within the Project, and/or any other parties for claims related to the ownership and/or operation of such Owner's or tenant's Commercial Condominium.

C. All Owners are advised to purchase insurance to cover their personal property and Improvements within their Units and to also obtain liability insurance. Owners are also advised to seek the advice of a knowledgeable insurance expert as to coverage that may be available to offer additional protection. "Loss Assessment" coverage, which insures the Owners for certain special assessments which might be imposed against them should also be purchased for additional protection.

Section 5. Fidelity Bonds. The Board shall obtain fidelity bond coverage on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the professional managing agent of the Association, whether or not such

persons are compensated for their services. The bond shall be in an amount as set forth in the Bylaws.

Section 6. Additional Insurance. The Board may, and if required by any Mortgagee or Eligible Insurer or Guarantor, or by FHA, FNMA, FHLMC, HUD or the VA (collectively, the "Agencies") shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild, steamboiler coverage providing at least \$50,000 coverage for each accident, and a blanket policy of flood insurance. The Board shall also purchase and maintain: worker's compensation insurance, to the extent that it is required by law, for all employees of the Association; and any other insurance as it deems necessary or that is required by any Mortgagee or by any of the Agencies.

Section 7. Authority of Board. 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. The Board is granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 8. Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Regular Assessments for the Common Area levied by the Association and collected from the Owners. That portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

Section 9. Annual Review by Board. The Board shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage for the Project, Owners, Mortgagees and the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 10. Notice of Cancellation. Any policy obtained by the Association must provide that it may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Eligible Mortgage Holder listed as a scheduled holder of a First Mortgage in the policy.

ARTICLE IX

Destruction of Improvements

Section 1. Partial Damage. In the event any Improvements or any fixtures or personal property in the Project which is owned by the Association or owned in common are partially destroyed by fire or other casualty, or by partial condemnation, it shall be the duty of the Board to cause the same to be restored and repaired to its former condition, as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance shall be made available for such purpose. If the amount available from the proceeds of the insurance policies for such restoration and repair is at least eighty-five

percent (85%) of the estimated cost of restoration and repair, a Special Assessment shall be levied by the Board to provide the necessary additional funds. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be less than eighty-five percent (85%) of the cost of the repair or construction and/or in the event such destruction is in an amount equal to fifty percent (50%) or more of the total value of the entire Improvements on the Property, the Beneficiaries of fifty-one percent (51%) of the holders of First Mortgages on the Condominium in the Project and the Owners of individual Units, by vote of the Owners owning sixty-seven percent (67%) in interest in Common Area, in person or by proxy, at a duly constituted meeting, shall determine whether the Board shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a Special Assessment of the Owners may be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purposes. In the event of a determination by the Owners that the cost of such reconstruction would be so substantial that it would not be in their best interests to proceed with the same, the Owners may, in their discretion, proceed as provided hereinafter.

Section 2. Total Destruction. In the event of the total destruction (more than fifty percent (50%) of the total value of the Improvements on the Property) of the Improvements on the Property, the Owners, by the requisite vote as set forth in Section 1 above, shall likewise have the authority to determine whether said Improvements shall be rebuilt, or whether the Property shall be sold. In the event of the determination to rebuild and if the insurance proceeds shall be insufficient for the same, the necessary funds shall be raised by Special Assessment of the Owners.

Section 3. Determination to Rebuild. In the event of a destruction, whether partial or total, and whether by fire or other casualty or partial condemnation, and in the further event of a reconstruction, the Board shall be authorized to have prepared the necessary plans, specifications and maps, and to execute the necessary documents to effect such reconstruction as promptly as practicable, and in a lawful and workmanlike manner. Such reconstruction shall be in conformity with all applicable governmental regulations. A certificate of the resolution authorizing such reconstruction shall be filed by the Board with the county recorder within six (6) months from the date of such destruction, or if they do not, by any Owner and in the event of the failure to record such certificate within said period, it shall be conclusively presumed that the Owners have determined not to rebuild said Improvements. Any restoration or repair of the Project shall be performed substantially in accordance with the Declaration and the original plans and specifications unless other action is approved by Eligible Mortgage Holders on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgage Holders and the vote or consent of Owners owning sixty-seven percent (67%) in interest in the Common Areas.

Section 4. Determination Not to Rebuild. In the event of a determination not to rebuild, the Board shall be authorized to have prepared and to have filed, as promptly as practicable, a corrected subdivision map, (approved by the appropriate governmental authorities), converting the Property into an unimproved parcel of land, which shall be offered for sale, at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale, and the

proceeds, if any, of insurance carried by the Owners as a whole on the Property shall be distributed to the Owners in the proportions in which the fair market value of each Condominium bears to the fair market value of all Condominiums in the Project, provided that if at the time of distribution there is due and owing any encumbrance on any individual Unit, executed in good faith and for value, the balance of such encumbrance shall first be paid before the distribution of any proceeds to the Owner whose Unit is so encumbered. For purposes hereof, fair market value of the Condominiums in the Project shall be determined at the time of the destruction by an independent, qualified and experienced real estate appraiser appointed by the Board of Directors and the cost of such appraisal shall be an expense of the Association. The Board, or any member thereof as shall be designated by the Board, is hereby irrevocably appointed as the attorney in fact for each Owner to make, execute and deliver on his behalf any and all documents necessary or convenient to effect and complete said sale including, but not limited to deeds, escrow instructions and the like.

In the event of a destruction of the Improvements and in the event of a determination not to rebuild the same, the Board, or if they do not, any Owner, shall record a sworn declaration with the County Recorder where the Project is located setting forth such decision. The recordation of such declaration shall determine and terminate the title of each Owner of his Condominium and such title shall forthwith merge in the interest of each Owner in the Common Area, and forthwith upon such recordation, all Owners shall be and become tenants in common of the entire Project in the ratio that the floor area of each Condominium in the Project bears to the floor area of all Condominiums (Residential and Commercial) in the Project.

Section 5. Repair of Interior Damage. Restoration and repair of the damage to the interior of any individual Unit including, without limitation, all fixtures, cabinets and improvements therein together with restoration and repair of all interior paint, wall coverings and floor coverings shall be made by and at the individual expense of the Owner of said Unit and in the event of the determination to rebuild such partial or total destruction, the same shall be completed as promptly as practicable and in a lawful and workmanlike manner.

Section 6. Owners Dispute. In the event of a dispute amongst the Owners with reference to the distribution of any of the proceeds received in connection with any damage or destruction of any of the Improvements in the Project, or with reference to Special Assessments which may be levied pursuant to the provision of this Article IX, an Owner or the Board may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association and the decision thereof shall be final and conclusive upon all Owners.

ARTICLE X

Maintenance and Decoration of Buildings and Units

Section 1. Owners Maintenance. Each Owner shall have the exclusive right and duty, at his sole cost and expense, to maintain, repair, paint, repaint, paper, panel, plaster, tile, wax and finish, refinish or decorate the interior surfaces of the ceilings, floors, doors

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and perimeter walls of his Unit. An Owner shall be required to maintain any balcony which forms a part of his Unit in a neat and clean condition; however, the repair, painting and waterproofing thereof shall be the obligation of the Association; provided, however, if any damage is caused by acts of the Owner or his invitees, the cost of repair shall be paid by the Owner.

Each Owner shall also have the exclusive right and duty, at his sole cost and expense to maintain repair and replace, all glass and window breakage, screens and screen doors, shutters, awnings, window boxes, exterior doors, door frames, hardware attached to exterior doors and all permanent fixtures, appliances and equipment of his Unit, including but not limited to refrigerators, dishwashers, disposals, lighting fixtures, water heaters, ranges, fireplaces, air conditioning and heating equipment ("HVAC") and elements or other fixtures located within a Unit or on the exterior of a Unit or on the roof thereof or otherwise situated in the Common Areas but servicing only that Unit. In the event that air conditioning and heating equipment and elements or other fixtures are situated on the Common Area, an Owner is granted an easement for ingress and egress over said area for purposes of repairing and maintaining the same; provided, however, nothing in this Article shall be construed as permitting any interference with or damage to the structural integrity of the Buildings and nothing in this Section shall be construed as eliminating the necessity of obtaining the consent of the Architectural Committee (if required) as provided herein. In the event an Owner shall do anything with respect to his Unit or use his Unit in such manner that might have the effect of increasing the level of noise or sounds that can be heard outside of his Unit during his use and occupancy thereof, or which might cause a continual disturbance or annoyance to any other Owner, he shall be required to take at his own expense all reasonable measures to deaden, insulate and otherwise decrease the level of such noise or sounds to the minimum level reasonably possible so as not to cause an interference with the use and enjoyment by other Owners of their Units. Sound proofing of demising walls construction between Units shall not be disturbed without consent of the Architectural Committee and, if permitted to be disturbed, shall be returned to the same or better effectiveness. In the event of any dispute as to the meaning or intent of, or as to whether an Owner or the Association shall be liable for the maintenance, repair or replacement of any item of furnishings, fixtures, equipment or machinery, or any portion of the Project or Improvements thereon, the determination of the Board shall be conclusive as to all Owners.

Repair and maintenance of an Owner's Unit as may be occasioned by the presence of wood-destroying pests or organisms shall be governed by Section 1364(b) through (e) of the California Civil Code.

Section 2. Fixtures. Carpets, flooring, individual air conditioners, dishwashers, garbage disposals, ranges and ovens, which may be physically located within any Unit shall be deemed to be fixtures and attached to the realty, but the upkeep, maintenance, repairs and replacement shall be the responsibility of the Owner and not of the Association. All other furnishings, furniture, drapes and appliances are personal property and shall not, during the term of these restrictions, become a part of the Property.

Section 3. Consent of Architectural Committee for Changes. Except as may be otherwise provided, no Owner shall, at his expense or otherwise, make any structural

changes, repairs, or alterations to his Unit visible from the exterior, or the Common Areas or any facilities or structures thereon, without the prior written consent of the Architectural Committee provided for in this Declaration.

Section 4. Liens. No labor performed or services or materials furnished with consent of or at the request of an Owner or the Board, or their respective agent or his contractor or subcontractor shall be the basis for filing of a lien against the Project or against any other Condominium or Owner, unless such other Owner or the Board, as the case may be, has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by an Owner in the case of emergency repairs thereto, or in the case of an Owner failing to maintain those areas of the Project which he has the primary obligation to maintain hereunder. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Board, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Condominium from a lien against two or more Condominiums, or any part thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

Section 5. Maintenance Responsibility. Each Owner shall be required to properly and adequately maintain the elements of his Unit, including fit and finish items according to schedules or manuals provided by Declarant or product manufacturers, or under commonly accepted maintenance practices. Should Owner fail to do so, Declarant or manufacturer may be relieved of their warranty obligations.

ARTICLE XI

Use and Occupancy of Units and Common Area

Section 1. Single Family Use. Each Residential Condominium shall be occupied and used for residential purposes for a single family only and for no other purposes whatsoever except for occupations and businesses permitted by the Municipal Code of the City, and which do not otherwise interfere with the quiet enjoyment of other Owners and which comply with all laws and other governmental regulations. Condominiums owned by Declarant may be used by Declarant or its designees, as models, sales offices, construction offices and general offices for the purposes of developing, improving and selling Condominiums in the Project.

Section 2. Live/Work Units. Each Live/Work Unit may be used for both residential occupancy and work activity provided that such use is in compliance with the Municipal Code of the City and such use does not otherwise interfere with the quiet enjoyment of other Owners. Live/Work Owners are required to obtain business licenses and renew them annually for those live/work activities listed in Section 36.350.110 of the City Zoning Code.

Section 3. Commercial Use Restrictions.

A. The Commercial Condominium Owners and/or their tenants may be open for such hours of operation and may be used for any lawful business,

professional, commercial or office purposes so long as such use and hours of operation are in compliance with the City's Municipal Code and all other laws and other governmental regulations.

B. The provisions of this Section 3 may not be rescinded, enlarged, restricted, amended or otherwise modified in any manner without obtaining the written consent of a majority of the Voting Power of the Commercial Condominium Owners.

Section 4. Use by Declarant. Condominiums owned by Declarant and the Common Areas may be used by Declarant or its designees, as models, sales offices, construction offices and general offices for the purposes of developing, improving and selling Condominiums in the Project. The rights of Declarant pursuant to this Section shall be subject to the time limitations set forth in Article XIX.

Section 5. Rental of Units.

A. A Residential Owner and a Live/Work Owner may lease or rent his Condominium upon appropriate written notice to the Board of such intent; provided, however, that no such Owner shall be permitted to lease his Condominium for transient or hotel purposes or short term corporate housing and no such lease or rental shall be for a period of less than six (6) months unless otherwise approved by the Board. Any such lease or rental agreement shall be in writing and shall be in such form as approved by the Board. The foregoing shall not prevent Declarant from selling a model Unit(s) and leasing back the same for a period of one year or less.

B. The Commercial Owners may lease or rent all or part of Commercial Condominiums without the necessity of approval by the Board of the nature of the use, or of the tenant or the form of lease or rental agreement so long as the same is otherwise in compliance with this Declaration (including, but not limited to, the limitation on uses set forth in Section 3 above) and all applicable laws; provided, however, notice of the name of the tenant, his mailing address and the proposed use shall be given to the Board within five (5) business days after execution of the lease.

C. Any lease or rental agreement entered into by an Owner shall be in writing and shall require the tenant thereof to comply in all respects with the Governing Documents and any failure by the tenant to so comply shall be a default under said agreement. Violation of any of the Governing Documents by a tenant shall be imputed to the Owner and shall be deemed a violation by the Owner. Each lease shall contain a provision requiring the tenant, upon notification from the Association that the Owner is delinquent in payment of amounts due to the Association to pay all future rents to the Association until such time as all amounts due from the Owner to the Association have been paid in full.

Section 6. Common Areas. Except as otherwise permitted herein, there shall be no obstruction of any portion of the Common Areas nor shall anything be stored in the Common Areas, even on a temporary basis, without the prior written consent of the Board unless such area is specifically designated as a storage area.

Nothing shall be done or kept in or upon any Unit or in the Common Areas, which will increase the rate of insurance, without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or within his Unit or in the Common Areas, which will result in the cancellation of insurance on the Building or which would be in violation of any governmental statute, ordinance, rule or regulation.

No waste shall be committed and nothing shall be altered, installed or constructed in or on the Common Areas without the consent of the Board.

Section 7. Signs. No poster, billboard, sign, advertising or promotional activity of any kind shall be permitted in or on a Residential Owner's Unit or a Live/Work Owner's Unit or from the Common Area, without the prior written consent of the Architectural Committee. The foregoing restrictions shall not apply to signs or other displays used by Declarant, or its agents, in connection with the original sales or resale of Condominiums in the Project so long as Declarant shall own a Condominium in the Project and shall not apply to signs from a Commercial Condominium so long as the sign is in compliance with the sign criteria, if any, established by Declarant and all governmental rules and regulations.

Notwithstanding the foregoing, an Owner of a Residential and/or a Live/Work Condominium shall be permitted to display a sign from his Unit which advertises that the Unit is for sale, resale, or exchange, directions to the Owner's Unit, the Owner's or his agent's name and the Owner's or his agent's address and telephone number so long as the sign is of reasonable design and dimensions, has been approved by the Architectural Committee and is in compliance with all governmental regulations.

Section 8. External Items. No antennae (television, radio, satellite or of any sort), poles, wires (excluding telephone wiring), satellite dishes, solar panels, awnings, shutters, balcony covers or other similar external items shall be located on or outside of any Unit, or in or on the Common Areas, except with the express written consent of the Architectural Committee, or except as installed by Declarant. Notwithstanding the foregoing, a video or television antenna, including a satellite dish that has a diagonal measurement of one meter or less may be installed subject to "reasonable restrictions" imposed by the Board or the Architectural Committee. For purposes hereof, "reasonable restrictions" shall be defined in Section 1376(b) of the Civil Code.

Section 9. Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Project, except upon specific approval of the Board, except that an Owner shall be allowed to maintain a reasonable number of household family pets (but in the case of dogs and cats not to exceed two (2) of either dogs or cats or one (1) of each), so long as a pet does not unreasonably annoy, molest, or inconvenience any other Owners, guests or other pets and provided that such pet or pets shall, if and when declared to be a nuisance by the Board, shall forthwith be removed from the Project. Dogs must be "curbed" and kept on leash at all times while in or on the Common Areas. No wild, unusual or exotic pets shall be allowed, including, but not limited to, pigs, snakes, miniature horses, and the like; however, small pets such as birds, hamsters, fish and turtles may be kept in a contained environment (cage or aquarium). Pets shall not be permitted to deposit waste in any part of the Project and each Owner of a pet shall be obligated to immediately remove

the waste. Failure to do so shall be a violation of this Declaration. Any inconvenience, damage or injury caused by such household pet or pets shall be the sole responsibility of the respective Owner thereof and said Owner does hereby indemnify the Association, its Board of Directors, officers and the Manager and its staff and agrees to hold each of them harmless from and against any and all loss, cost, liability and expense of any kind and nature arising out of having pets within the Project.

Notwithstanding the foregoing, an Owner may not maintain in the Project any one of the following breeds of dogs: Staffordshire Terrier (Pit Bull), Rottweiler, Chow, Presa Canario, Wolf or Wolf hybrid or any mix of any of the foregoing breeds. Further, no Owner may maintain any dog with a prior history of biting or aggressiveness.

Section 10. Offensive Activities. No noxious or offensive activity shall be carried on in any part of the Project, nor shall anything be done therein which may be or become an annoyance or nuisance.

Section 11. Exterior Clothes Drying Facilities. Outside clothes lines or other outside clothes drying or airing facilities shall not be permitted.

Section 12. Rubbish, Refuse Containers and Disposal. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors shall be permitted to arise therefrom so as to render any Unit or portion thereof unsanitary, unsightly, offensive, or detrimental to any Unit or to the occupants thereof. Rubbish, garbage, trash, and all other refuse ("rubbish") shall be stored in such locations and such containers as are provided by Declarant, if any. Containers shall be concealed so as not to be visible from the street except that containers may be visible for collection but only for the shortest time necessary to effect such collection. Containers shall be situated as to be readily accessible for collection and if, at any time, Declarant provides a container storage area for Owners, the storage area provided by Declarant must be used. All trash placed in the trash chute must be put in sealed/plastic bags and no oversize items may be placed in the trash chute. No hazardous materials may be placed in a trash chute. Owners will be responsible for damage caused to the trash chute due to their misuse of the same.

Section 13. Structural Changes. Nothing shall be done in any Unit or in or on, the Common Areas which will impair the structural or aesthetic integrity of a Building or which would structurally alter said Building, except as is otherwise provided herein.

Section 14. Mineral Exploration. No drilling, oil development, operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Common Areas or within 500 feet below the surface of the Property.

Section 15. Development of Air Space. No development shall be made of the air space above the exterior of any structure or any Unit or in or on the Common Areas except upon the written consent of the Board.

Section 16. Violation of Rules and Laws. There shall be no violation of the Rules or Regulations as may be adopted by the Board or the Architectural Committee. There

shall be no violation or failure to comply with applicable laws, orders, or directives of any lawful authority.

Section 17. Owner Liability. Each Owner shall be liable to the Association and/or another Owner(s) as such liability may be determined pursuant to the laws of the State of California, for any damage to any portion of the Common Areas and/or another Owner's Unit, or the equipment, facilities or structures thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, relatives, guests, invitees, employees, or tenants, both minor and adult. In the case of joint ownership, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any person while physically within the Unit of any Owner, and in the further event that any other Owner shall be sued, or a claim made against him or her for said injury or damage, the Owner or Owners of the Unit in which said injury or damage occurs, shall fully indemnify and hold harmless any such other Owners against whom such claim shall be made, and shall further defend any such other Owners at his or her own expense in the event of litigation of such claim; provided, however, that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

Section 18. Exemption of Payment of Maintenance Fee. No Owner may exempt himself from liability for his contribution to the maintenance fund by any waiver of the use or enjoyment of the Common Areas, or by the abandonment of his Condominium.

Section 19. Electronic Equipment and Wireless Network. No electronic transmitting equipment other than wireless telephones, computers and similar items and electronic transmitting equipment and devices installed by Declarant and/or approved by the Architectural Committee shall be installed and maintained or used within the Residential Units and Live/Work Units or Common Area.

No owner shall install a wireless network in a Building unless he shall have obtained the approval of the Board and instructions from the Board and/or the then current wireless internet provider. The foregoing is necessary to avoid wireless internet transmission conflicts within the Building and between Units.

Section 20. View. Each Owner, by acceptance of a deed or other conveyance of a Condominium, acknowledges that any construction or improvement by Declarant, the Association, or any other Owner, or the owners of any property contiguous or adjacent to the Project, may impair or obstruct any view that such Owner may have enjoyed at the time of the purchase of the Condominium, and such Owner hereby acknowledges that any rights acquired do not include the preservation of any view, and further consents to such obstruction and/or impairment. There are no express or implied easements whatsoever appurtenant to any Condominium for view purposes, or for the passage of light and air to or from any Condominium in the Project.

Section 21. Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Condominium which will obstruct or unreasonably interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noise (e.g., inappropriate use of horns), odors, or otherwise, nor will any

Owner commit or permit any nuisance on the Project or commit or suffer any immoral or illegal act to be committed thereon. Each Owner acknowledges and understands that the condominium building is not sound proof and noises from adjacent Condominiums will be heard.

Section 22. Windows; Window Coverings. No window in any Dwelling Unit shall be covered in whole or in part, inside or outside, with aluminum foil, sheets, towels, paper, newspaper, paint, tint (other than Commercial Condominiums) or any other material reasonably deemed inappropriate for such use by the Association. The Board or Architectural Committee may adopt reasonable Rules and Regulations concerning the type, color and design of window coverings for Residential and a Live/Work Units. Window treatments installed by Declarant, if any, may not be changed without the consent of the Architectural Committee. No security bars or similar devices may be placed on any doors or windows.

Section 23. Window Glass; Screens. No Owner or occupant shall replace the glass in the windows, or any window or door screens of his Condominium Unit, except with the same material, or best substitute if same is not available, and similar quality to that originally installed within the Unit.

Section 24. Waterbeds. Any Owner (and his tenant) shall be fully liable to other Owners, and their families, guests and invitees, and the Association for any damage to persons or property resulting from the placement, use, maintenance, movement, repair or replacement of any waterbed in such Owner's Unit.

Section 25. Sound Systems. Sound system loudspeakers shall not be rigidly attached to the ceilings, walls, shelves or cabinets, so as to introduce vibrational energy into the structure. Suitable mounting and/or vibration isolation shall be incorporated to preclude such occurrence.

Section 26. Impact Noise. Sounds of impact on floors above a Unit may cause those sounds to be transmitted to the Unit below. It is mandatory, for the mutual interest and protection of all Owners, lessees and other occupants within the Project, to recognize that acoustical privacy is achieved only through mutual understanding and compliance with certain limitations and restrictions. Each Owner hereby acknowledges that total noise insulation from an adjacent occupancy in a manner comparable to a single-family residence is impossible to attain. Each Owner understands that there will usually be some audio awareness of one's neighbors, depending upon the situation.

Section 27. Owner Cooperation for Fumigation & Repairs. In the event that it shall become reasonably necessary for the Association to fumigate the Building to control termites, insects, wood-destroying pest or organisms affecting the Common Area, the Owners of all Units shall cooperate with the Association so as to enable such work to be promptly and effectively completed (including, but not limited to, agreeing on the dates the Owners will vacate their respective Condominium Units to enable the fumigation work to be performed). The cost of such fumigation may be included in the Regular Assessment or reviewed by the Board as a Special Assessment in accordance with the Article entitled "Assessments" as the Board deems appropriate. In any case, each Owner shall be

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responsible for his respective costs for food and lodging during the period the Building is required to be vacated.

If it shall become reasonably necessary for an Owner or Owners to vacate their Unit due to repairs or restoration work to be performed by the Association, the affected Owner(s) shall cooperate with the Association and will vacate their Condominiums to enable the work to be performed. In the event it is necessary to temporarily vacate a Unit to accommodate the control of termites, insects, wood-destroying pests or organisms, or for repair or restoration work, the Association shall give notice to the affected Condominium Owners not less than thirty (30) days prior to the date that said Owners must temporarily vacate their Unit unless an emergency situation exists. The notice shall state the reason for the temporary relocation, the date and time of the beginning of the fumigation of repair, the anticipated completion date, and the fact that each owner shall be responsible for his respective costs for food and lodging during the temporary relocation. In order for the above-mentioned notice by the Association to be deemed complete, the Association must comply with either of the following:

(a) Personal deliver of a copy of the notice to the occupants of the affected Units and the mailing of said notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address indicated on the books of the Association; and

(b) Mailing a copy of the notice to the occupants of the affected Units at the address of said Condominium Units and a copy of the notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address shown on the books of the Association.

Section 28. Parking and Parking Spaces.

A. No parking space may be sold or assigned to, or retained in the ownership of, any person not an Owner and no Residential parking space may be rented or leased to a non-Owner except in connection with a lease of a condominium.

B. No vehicle other than standard passenger automobiles, vans and sports utility vehicles designed to carry no more than nine (9) passengers, pickup trucks not exceeding three-quarter ($\frac{3}{4}$) ton and motorcycles ("Permitted Vehicles") shall be permitted to be parked upon any area within the Project, except that commercial vehicles making deliveries or providing services, to an Owner or his Unit may temporarily park their vehicles in the Project. Owners, and their tenants may park Permitted Vehicles only in parking spaces which have been deeded or assigned to them.

C. Buses, trailers, campers, recreational vehicles, travel trailers, motor homes, inoperable vehicles and the like shall not be permitted upon any area within the Project.

D. No repairs shall be made to any vehicle while parked in any area in the Project, except in the case of strict emergency.

E. No Residential Owner, or his invitees, or tenants may park in Commercial Parking Spaces, and no Commercial Owner, or his invitees, tenants, or guests may park in any Residential Parking Spaces.

F. The Board may establish Rules and Regulations regarding parking, including the establishment of "parking" and "no parking" areas for the Residential Parking Spaces.

G. There shall be no washing of vehicles in the parking spaces or in any other area of the Project.

H. Parking spaces shall be used solely for parking of Permitted Vehicles and for no other use.

I. Owners shall keep their parking spaces free of oil, brake fluid, power steering fluid or other fluids or stains.

J. All applicable provisions of the *California Vehicle Code* will be enforced within the Project. Pursuant to *Vehicle Code* §22658.2, as amended from time to time, the Association may cause the removal of any vehicle wrongfully parked in the Project (including a vehicle owned by an occupant) to the nearest public garage if all of the following requirements are satisfied:

(1) The Association has installed a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

(2) If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association, or his or her designee shall, within a reasonable time, notify the Owner of the removal by first class mail. If the identity of the Owner of the vehicle is not known or ascertainable, the President of the Association or his or her designee shall comply with Section 22853 of the *Vehicle Code*, as amended.

(3) The President of the Association, or his or her designee, gives or causes to be given, notice of the removal to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number, and the address from where the vehicle was removed.

Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority, or in a manner which interferes with any entrance to, or exit from, the Project or any garage or parking space located thereon.

The Association, its Members, Board of Directors, officers, agents and employees shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association, its Members, Board of Directors, officers, agents and employees. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

Neither Declarant, the Association, nor any member of the Board of Directors shall be liable for theft of, or damage to, any automobile unless the same is due to gross negligence or wilful misconduct.

Section 29. Utility Usage. If water, gas or electric current is not separately metered for each Unit, and if an Owner uses water, gas or electric current in excess of that usually furnished or supplied for use of similar Units, the Association may cause a separate water, gas or electrical current meter to be installed in the Unit(s) to measure the amount consumed for any such use. The cost of installation, maintenance and repair of any such meter shall be paid by the Owner. The Owner will pay to the Association, promptly on demand, for all such water, gas and electric current consumed as shown by the meters, at the rates charged for such services by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water, gas and electric current so consumed. If a separate meter is not installed such excess costs for such water, gas and/or electric current may be established and adjusted from time to time by an estimate made by a utility company or electrical engineer.

Section 30. Floor Coverings and Alterations.

A. In order to ensure better sound attenuation within the Condominium Building, no changes may be made in the floor covering initially installed by Declarant in any Unit which is above another Unit unless first approved by the Architectural Committee. If approved by the Architectural Committee, the alternative materials must be underlain with a sound attenuating material, which, if installed as per manufacturer's recommendations, that meets a minimum field impact insulation class (File) of 50. The Architectural Committee may, prior to the installation thereof, inspect and approve the sound attenuation standards and other potential adverse noise and structural effects of the installation and maintenance of such flooring materials.

B. If any flooring is to be altered, the Owner shall be required to maintain the noise and impact standards associated with the materials originally installed on the Building. Testing, if required, shall be conducted by a laboratory accredited through the National Voluntary Laboratory Accreditation Program (NVLAP) for ASTM E336 and E1007.

C. In the event of a complaint regarding sound transmission noises, both the complaining Owner and the Owner shall place funds into an escrow account. An acoustical firm having NVLAP accreditation for ASTM E336 and E1007 shall be contracted to perform a test on the floor. The test shall meet the minimum standard set forth above. If the floor fails to meet the requirements, then the Owner of the floor shall

provide corrective action such that the floor meets the requirements and shall be responsible for the cost of the test. If the floor meets the building requirements, then the complaining Owner shall be responsible for the cost of the test and no corrective measures will be required.

Section 31. Modifications. No modification, improvement or alteration may be made to any component of an Owner's Unit, including HVAC, or other mechanical systems, fire/life safety system (including fire sprinklers) plumbing and/or electrical which in any manner affects any of the Common Area or common elements of the Project without the prior express written approval of the Board. Any modifications to these systems shall not cause an increase in sound level in other Units or in the Common Area.

Section 32. Hazardous Materials. No hazardous, toxic or contaminated materials which are regulated by any federal, state or local agency shall be stored, placed or used on the Project; provided, however, the Association shall be entitled to use appropriate cleaning supplies which contain hazardous materials, provided such cleaning supplies are utilized and promptly disposed of in accordance with applicable law. Within ten (10) days of receipt of written notice from the Association specifying any item which creates such an insurance issue or constitutes such waste, the Owner shall cause such item to be removed at such Owner's sole cost and expense. In the event such item is not timely removed, the Association may enter upon such Unit and remove or cause to be removed, such item and assess the Owner the amount of all costs and expenses therefor.

Section 33. Compliance with Declaration. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Declaration as lawfully amended from time to time, and failure to comply with any such provisions shall be grounds for an action to recover sums due, for damages, alternative dispute resolution or for injunctive relief. These remedies are intended to be cumulative, and shall not prevent the exercise of any other right or remedy available at law or in equity. There shall be no violation of the Declaration. If any Owner, his family, assistants, agents, guests, licensees, tenants or invitees violate the Declaration, or any of them, enforcement action may be taken accordance with the Bylaws or the Declaration.

Section 34. Balcony Restrictions. No portion of any balcony shall be enclosed in any manner whatsoever, nor shall any structure, shade, screen, awning, hanging plants or other devices be attached thereto. An Owner shall not be permitted to install any deck covering of any kind or nature on his balcony. Further, nothing shall be placed, stored, used, or maintained on an Owner's balcony (except for patio type furniture with glides or caps, plants in pots with containers to catch excess water and BBQs, hibachis, and other similar devices) and no objects may be placed on the handrails of balconies or hung from any part of a balcony and no penetration may be made in the balcony deck or the overhang ("ceiling") of a balcony. Plants must be maintained in good, healthy condition.

No sprinkling or hosing of water shall be conducted within any balcony area. Floor surfaces within the balcony may be damp mopped, provided that the water or other substance used for such damp mopping shall be strictly confined to such balcony areas. The purpose of this restriction is to prevent any Owner from engaging in any activity which results in water or any other substance leaking or dripping onto other portions of the

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Common Area and/or other Units within the Project. An Owner shall be required to keep his balcony free and clear of all debris and overflows. Drains located in an Owner's balcony shall at all times be kept open and free of debris.

Section 35. Additional Provisions. Notwithstanding the provisions contained in this Declaration, the Association and the Owners should be aware that there may be provisions or various laws including, without limitation, the Davis-Stirling Common Interest Development Act codified at Sections 1350, *et seq.* of the *California Civil Code*, which may supplement or override the Declaration.

ARTICLE XII

Architectural and Design Control

Section 1. Consent of Architectural Committee Required. Except as herein otherwise provided in certain matters involving Commercial Condominiums, no Owner shall, at his expense or otherwise, make any structural changes, structural repairs, or structural alterations to his Unit or the Common Areas or any facilities or structures thereon, nor shall he make any alterations, additions, Improvements, repairs, or modifications or changes in paint or finish or color of the Common Areas or any facilities or structures thereon, or install awnings or sunshades or any other structure or device, or perform any landscaping of any kind or character, or make any change, alteration, improvement or repair visible from the exterior of the Units, without the prior written approval of the Architectural Committee. Such approval may be withheld if in the view of the Architectural Committee, the Improvement would affect the uniformity and the attractiveness or the value of the Project as a whole. The Architectural Committee, on behalf of the Association, shall have the right to enjoin a breach, or threatened breach, of any of the provisions of this Article, which shall be in addition to any other rights and remedies available to the Board or any Owner.

Notwithstanding the foregoing, Owners of Commercial Condominiums and their tenants shall have the right to make non-structural changes, alterations and/or repairs to the interior and front of their Units and their Exclusive Use Common Area, if any, without obtaining the consent of the Association or the Architectural Committee. Owners of Commercial Condominiums shall be required to comply with sign criteria, if any, established by Declarant and/or the City.

Section 2. Plans and Specifications. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such Improvements, alterations, etc., shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures and topography. Approval may be withheld if in the view of the Architectural Committee the Improvements would affect the uniformity and the attractiveness or the value of the Project as a whole.

Section 3. Appointment of Architectural Committee. Declarant shall initially appoint the original Architectural Committee, which shall consist of not less than three (3) nor more than five (5) members. Said members shall remain until the first anniversary of

the issuance of the Public Report for the Project. Declarant reserves to itself the power to appoint a majority of members of the Architectural Committee until ninety percent (90%) of all the Residential Units in the Project have been sold or until the fifth anniversary of the issuance of the Final Subdivision Public Report, whichever first occurs. Until the earlier of the events specified in the preceding sentence, the provisions of this Section 3 may not be amended or deleted without the written consent of Declarant. Thereafter the Board shall have the power to appoint all of the members of the Architectural Committee. After one (1) year from the date of the issuance of the original Public Report, at least one (1) member shall be appointed to the Architectural Committee by the Board. Members appointed to the Architectural Committee need not be Members of the Association. Action taken by the Architectural Committee shall not be subject to review, revision or revocation by the Board.

Section 4. Approval or Disapproval by Architectural Committee. The Architectural Committee or the Association shall approve or disapprove a proposed alteration by sending a written notice thereof to the Owner who so requested said proposed alteration. The approval thereof may be recorded in the office of the County Recorder, but such approval shall not have the effect of, or be construed as, in any manner modifying, altering or waiving any of the provisions, covenants, conditions or restrictions set forth herein. The Architectural Committee shall make its determination as to approval or disapproval of the proposed alterations within thirty (30) days of the submission of said proposed alteration to the Committee. Failure on the part of the Architectural Committee or the Association to record such disapproval or to render a decision within the thirty (30) day period mentioned above, shall be deemed to be a waiver of any and all jurisdiction of said Architectural Committee or Association as to said plans and specifications, or either of them, and of said location and/or construction, but nothing contained herein, shall be construed as a waiver on the part of the Association or its successors or assigns or any other Owner in the Project, of their right to enforce the conditions recited herein or their right to enforce compliance of any other conditions, restrictions and covenants set forth herein. In the event of any disapproval by the Architectural Committee of either a preliminary or final submission of plans, a resubmission of revised plans will follow the same procedure as the original submission.

Section 5. Diligent Prosecution of Work. The approval of any improvement, erection, construction, refinishing, installation, placement, or alteration of a building, or other structure, shall be deemed conditional upon (i) the use of a licensed contractor qualified to perform such work, (ii) the delivery to the Architectural Committee of evidence that such contractor has general liability and workers compensation insurance with such minimum coverage requirements as may reasonably be established by the Architectural Committee, and that such coverage will not be reduced or cancelled without thirty (30) days prior written notice, and (iii) the commencement of said work within ninety (90) days after the approval of the Architectural Committee for the same shall have been obtained, or within such other period as shall have been specified by the Architectural Committee at the time of its approval. Work thereon must thereafter be prosecuted diligently to completion within a reasonable time and in any event before the expiration of such period as may be specified by the Committee. The Architectural Committee may for good cause, as determined by it, in writing, extend the period for completion of any such erection, construction, refinishing, installation placement or alteration. During said construction period, the area shall be kept clear of debris and refuse to the greatest extent possible. In

the event the work is not commenced within said ninety (90) days, the approval of the Architectural Committee shall lapse and become void unless the Architectural Committee, in its discretion, shall give written notice of waiver of the time condition. Said written notice of waiver may contain such terms and conditions as the Architectural Committee may deem proper, and shall not be deemed a waiver of any rights or authority of the Architectural Committee except as expressly stated in said written notice. Upon such lapse of approval, all proceedings shall terminate, and approval shall be conditional on the filing of new plans and architectural review fee as provided herein.

Section 6. Failure to Complete. The Owner shall complete any approved work within the approved time schedule, except for such time as completion would result in great hardship to the Owner or is rendered impossible due to fire, natural calamities, strikes, national emergencies, or other forces beyond the control of the Owner.

Section 7. Inspection of Work. Upon the completion of any construction, reconstruction, or the alteration or refinishing of the exterior of any Improvement, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Committee. Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. If the Owner fails to give written notice as provided herein, the period within which the Architectural Committee may inspect the Improvement and give notice of non-compliance shall be extended to one hundred eighty (180) days after actual completion.

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 Architectural Committee shall then set a date on which a hearing shall be held regarding the alleged non-compliance. Said date shall not be more than sixty (60) nor less than thirty (30) days after said notice of non-compliance was given to the Owner. Written notice of the hearing date shall be given at least ten (10) days in advance thereof to the Owner.

At the hearing, the Owner, the Architectural Committee, and any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Architectural Committee shall determine whether there is a non-compliance, and if so, shall determine the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Architectural Committee shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Architectural Committee ruling. If the Owner does not comply with the ruling within such period or within any extension thereof as the Architectural Committee may grant in its discretion, the Architectural Committee, at its option, may enter the Unit after three (3) days' written notice to the Owner of such Unit and perform, or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-

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compliance, and the Owner of said Unit shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor.

If, for any reason, the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, or within one hundred eighty (180) days of the date of completion in the event the Owner fails to give written notice, the Improvement shall be deemed to be in accordance with said approved plans.

Section 8. Unauthorized Improvements. If any Improvement is made without first obtaining approval of the Architectural Committee, the Committee shall give written notice to the Owner of violation of this Declaration within one hundred eighty (180) days after the Committee obtains knowledge of such Improvement. If the Architectural Committee fails to give such notice within the time specified, the Improvement shall be deemed to be in compliance with this Declaration. Within thirty (30) days of said notice, the Owner shall either (a) remove said Improvement at his own expense and restore the Unit to its condition prior to commencement of said Improvement, or (b) submit plans and all other items required by the Architectural Committee, together with an additional late application fee, in an amount determined by the Architectural Committee, which fee shall be payable to the Association. If the Owner has failed to take such action within said thirty (30) day period, the Architectural Committee, at its sole option, may enter the Unit after three (3) days' written notice to such Owner and perform or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of said Unit shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor. If the Owner elects option (b) described in this Section, the Architectural Committee shall determine within sixty (60) days from the date of filing the late application if the plans are acceptable and if the Improvement is in compliance with said plans. If the Architectural Committee notifies the Owner of disapproval of the plans or of non-compliance of the Improvement within said sixty (60) day period, the Improvement shall be removed by the Owner unless an extension of time is granted in writing by the Architectural Committee in its sole discretion to permit modification of said plans and/or to permit the Owner to remedy the non-compliance. If the Architectural Committee fails to notify the Owner of disapproval or non-compliance within said sixty (60) day period, the plans shall be deemed approved and the Improvement shall be deemed in compliance with said plans. The Architectural Committee shall also have the right to obtain injunctive relief to prevent a breach, or threatened breach, of the provisions hereof in addition to any other rights and remedies the Architectural Committee shall have in law or in equity.

Section 9. Architectural Committee Certificate. The Architectural Committee shall, upon approval by a majority of its members or within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment of a reasonable fee (as fixed from time to time by the Architectural Committee), record a Certificate, executed by any two of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof, either (a) all Improvements made and other work done upon or within said Unit comply with this Declaration, or (b) such Improvements or work do not comply, in which event the Certificate shall also identify the non-complying Improvements or work and set forth with particularity the cause or causes for such non-

compliance. Any purchaser from the Owner, or from anyone deriving interest in said 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 Architectural Committee, Declarant, and all Owners and such persons deriving any interest through them.

Section 10. Access to Premises. Each member of the Architectural Committee, Declarant, and any agent or employee of said Architectural Committee or Declarant, after the Architectural Committee has given forty-eight (48) hours prior written notice shall at all reasonable hours have access to any building site, premises, residence, building, or structure constructed, placed or maintained upon any portion of the Project for the purpose of inspection of the same relative to compliance with this Declaration or for repairing or remedying any non-compliance as provided in this Declaration, and shall not be deemed guilty of trespass by reason of such entry.

Section 11. Non-Liability. Neither Declarant, the Architectural Committee, nor any member, agent, or employee of Declarant or the Architectural Committee, shall be liable to any Owner for any loss, damage, or prejudice suffered or claimed on account of (a) any defects in any building or other structure erected, constructed, installed, placed, altered, or maintained in accordance with or pursuant to any plans and specifications, exterior materials, color scheme, plot plan, grading plan, or other material approved by the Architectural Committee or any conditions or requirements that may have imposed with respect thereto, (b) approval or disapproval of any item submitted to the Architectural Committee by an Owner, or (c) the execution and filing of a Certificate. Approval by the Architectural Committee shall not be deemed a representation or warranty that the Owner's plans and/or specifications or the actual construction of an Improvement comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and building codes.

Section 12. Declarant's Exemption. Declarant shall not be subject to the requirements of this Article XII until the expiration of five (5) years from the date of the original issuance of the most recently issued Final Subdivision Report for the Project.

Section 13. Fees. The Architectural Committee shall act without compensation but shall be permitted to charge a reasonable fee to be paid to the Association for any set of plans which may be submitted to it for approval. In the event the Committee shall be reasonably required to engage a professional consultant to assist it in its determination, the Architectural Committee shall first obtain an estimate of the fees to be paid to such consultant and shall notify the Owner of such fees. The Owner shall be required, as a condition to proceeding further, to agree to pay such fees. If the Owner shall not agree to pay such fees, the matter submitted before the Architectural Committee shall be deemed to be disapproved unless some alternative method of providing the necessary assistance (which is in a form satisfactory to the Architectural Committee) shall be provided.

Section 14. Architectural Guidelines. The Architectural Committee shall have the right, from time to time, to adopt architectural guidelines relating to any improvement, alteration, or construction in any Unit or in or on the Common Areas in order to provide for the uniformity and the attractiveness and value of the Project as a whole; provided,

however, that such guidelines shall not be in conflict with any of the provisions of this Declaration.

Section 15. Failure to Establish Architectural Committee. In the event that for any reason the Architectural Committee shall not be established, or if established, shall thereafter cease to exist, all of the rights, powers, duties and obligations of the Architectural Committee shall be performed by the Board.

Section 16. Commercial Condominiums and Common Area. Notwithstanding anything contained in this Article XII to the contrary, so long as Declarant, or its successor, is the Owner of a Commercial Condominium certain matters pertaining solely to the Commercial Condominiums shall be subject solely to the approval and control of Declarant or its successor. At such time as Declarant, or its successor, no longer owns a Commercial Condominium, the Commercial Condominium Owners shall alone, but subject to the other provisions of this Declaration, make decisions pertaining to the Commercial Condominiums (excluding structural changes and changes in the color of the exterior of the Buildings, and changes which unreasonably affect the overall quality or esthetics of the Project), including and not limited to, the following:

- A. Design of the store fronts.
- B. Signs advertising the name and/or business of a Commercial Condominium Owner, or its tenant, provided, however, that a sign may not be placed on the Common Area which is higher than the highest vertical dimension of a Commercial Condominium.
- C. Design, size, color, location and materials of awnings, canopies, sunshades and the like.
- D. Lighting.
- E. Interior improvements.
- F. Commercial Parking Spaces.
- G. Hours of Operation.
- H. Types of businesses.
- I. Loading dock area.
- J. Demising into separate tenant space of varying sizes including, without limitation, the relocation of exterior doors and doorways necessary or appropriate to permit the re-demising of existing space.
- K. Any other matter pertaining solely to the Commercial Condominium except as otherwise provided herein.

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The provisions of this Section 16 may not be rescinded, restricted, amended, or otherwise modified without obtaining the written consent of a majority of the Voting Power of the Commercial Condominium Owners.

ARTICLE XIII

Repair of Common Facilities by Individual Owner and Right of Entry

If any common facility or any portion of the Common Areas falls into disrepair or is damaged and the Board, or the appropriate Committee, fails to take action to repair or restore the same within sixty (60) days after written notice so to do from any Owner, then such Owner may make such repairs as are necessary to ensure his enjoyment of his own Condominium; provided, that such Owner first obtains the approval of Owners holding fifty-one percent (51%) of the Voting Power of each class of Members. Such Owner shall receive at least two (2) bids before employing any person, firm or corporation to perform such work. Such Owner may, to the extent necessary, enter on any Unit or any portion of the Common Areas to effect such repairs. Any such entry shall be made with as little inconvenience as practicable to the Owners affected, and to the other Owners in their use of the Common Areas. Any damage caused thereby shall be forthwith repaired by the entering party. The Board shall reimburse such Owner undertaking to make such repairs out of the maintenance fund for all reasonable expenses incurred by him in making such repairs, and if such fund be insufficient, shall cause the levy of a Special Assessment.

ARTICLE XIV

Utilities

Section 1. Utility Rights. The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone or television cables and heating and air conditioning, shall be governed by the following:

A. Wherever sanitary sewer connections and lines or electricity, gas, telephone lines, heating and air conditioning lines or television cables are installed within the Project, which connections or any portion thereof, lie in or upon portions of the Project owned by others than the Owner of a Unit served by said connections, the Owners of any Units served by said connection, shall have the right and are hereby granted an easement, to the full extent necessary therefor, to enter upon such portion of the Project or to have the utility companies enter thereupon to repair, replace and generally maintain said connection as and when the same may be necessary as set forth below.

B. Wherever sanitary sewer connections and lines, facilities, and/or water connections and lines or electricity, gas, telephone lines, air conditioning and heating lines, or television cables are installed within the Project, which connections serve more than one Unit, the Owners of each Unit served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as services their Unit.

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C. In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts or failure to act, the willful misconduct of one Owner or any of his employees, agents, invitees, tenants or guests, such connection or line shall be repaired or restored by the Association, but at the expense of the Owner(s) who commit(s) or whose guests, agents, or employees commit, such act or acts.

D. In the event any portion of such connection or line is damaged or destroyed by some other cause than the negligence or willful misconduct of one of the Owners, his employees, agents, guests, tenants or invitees (including ordinary wear and tear and deterioration from lapse of time) then in such event, such connection or line shall be repaired and restored by the Association, such repair and restoration to be paid out of the assessments levied in accordance with this Declaration.

E. In the event of a dispute between Owners with respect to the repair or rebuilding of said connection or with respect to the sharing of the costs thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board for a final and binding determination.

Section 2. Utility Easements. The Association and utility companies shall have easements through the Units and the Common Areas for all facilities for the furnishing of utility services, television cable service, satellite dishes and heating and air conditioning lines within any Unit, which facilities shall include but not be limited to, conduits, ducts, plumbing and wiring, shall be appurtenant to each Condominium and all other Condominiums and the Common Areas shall be subject thereto; provided, however, that easements for such facilities shall, at all times be and remain substantially in accordance with the initial construction of the Project or the Project as reconstructed upon damage or destruction pursuant to the terms of this Declaration.

ARTICLE XV

Entry for Maintenance, Repairs or Construction

The Board or its designated agents may enter upon any Unit, when necessary in connection with any maintenance, repairs or construction for which the Board is responsible, or for any maintenance required by reason of the failure of an Owner to maintain as provided herein, or to abate any nuisance being conducted or maintained therein. Such entry shall be made after reasonable notice to the Owner, except no notice need be given in the event of an emergency. Further, such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund, unless such maintenance, repair or construction is the financial responsibility of an Owner under this Declaration, in which event such damages shall be repaired at the expense of such Owner. There is hereby reserved to Declarant and the Board, for the benefit of each Owner, easements over each Unit and the Common Area, for the purpose of maintenance and repairs and such further purposes as are necessary to perform the duties and obligations of the Board and the Association.

ARTICLE XVI

Partition

Except as expressly provided in this Article, an Owner shall have no right to partition or divide his or her ownership of the Common Area or sell or convey all or part of his interest in the Common Area except in conjunction with the sale of his Condominium. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article IX (relating to damage or destruction) or Article XXI (relating to condemnation) or in California Civil Code Section 1359 have been met. Nothing in this Declaration shall prevent partition of a co-tenancy in a Condominium. None of the component interests in a Condominium may be severally sold, conveyed or encumbered nor may an Owner sever any exclusive easement appurtenant to his Unit and any attempt to do any of the foregoing shall be void.

The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when the partition of the Owners' interests in said Project may be had as provided herein or by law. Except as otherwise provided in Section 1359 of the Civil Code, the power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Areas or by any two (2) members of the Board who are hereby authorized to record a Certificate of Exercise in the Office of the County Recorder where the Project is located, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE XVII

Structural Alterations

A proposal for any structural alteration or addition to structures in the Project may be made at any regular or special meeting of the Owners, provided that said proposal shall be accepted only upon the affirmative vote of Owners holding three-fourths (3/4th) of the Voting Power of the Owners. The approval of Owners pursuant to this Article XVII shall relate to proposed alterations or additions involving the Project as a whole as opposed to changes requested to be made by an Owner to his Unit which shall be governed by Article XII. Unless otherwise agreed at the meeting of the Owners approving said proposal, the cost of the alteration or addition so approved shall be paid from the maintenance fund for the Common Area and the Board shall levy a Special Assessment to cover said cost. Notwithstanding the foregoing, no structural alteration or addition shall be permitted without first obtaining the approval of the original structural engineer for the Project, if available, and if not, then from another duly licensed structural engineer and obtaining all necessary permits and approvals from the appropriate governmental agencies.

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ARTICLE XVIII

Easements

Section 1. Easements for Encroachment. Each Condominium within the Project is hereby declared to have an easement over all adjoining Condominiums for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

If any portion of the Common Areas encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event a multi-family structure is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Common Areas due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

The Common Areas is, and shall always be, subject to easements for minor encroachments thereon of the Units.

Section 2. Easements for Maintenance and Repairs. There is hereby reserved to Declarant, the Owners and the Association for the benefit of each Owner, non-exclusive easements over each Unit and the Common Areas for the purposes of permitting: (i) maintenance, repairs, additions and replacements and inspections thereof to be effected to the Common Areas of the Project as a whole, or to or for the benefit of an individual Unit, (ii) performance of all other duties and obligations of Declarant, the Association and/or an Owner, as the case may be and (iii) ingress to and egress from the Units, and the Common Areas for the foregoing purposes.

Section 3. Easements to Owners. Each Owner of a Condominium is hereby granted a non-exclusive easement over portions of the Common Area, excluding Exclusive Use Common Areas, for ingress to and egress from all portions of the Common Area for the purpose of installing, maintaining, servicing, repairing and/or replacing equipment, operating systems, utilities, mechanical systems and the like which service the Condominiums and for the purpose of ingress to, and egress from, the Parking Area.

The Association shall have the right, with the prior consent of Members owning at least fifty-one percent (51%) of the Voting Power in the Association to grant exclusive use of a portion of the Common Area to an Owner. The vote of the Members

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shall not be required for an easement specified in Section 1363.07(a)(1)(2) and (3) of the *California Civil Code*.

Section 4. Easements for Master Antennae, Cable Television and Alarm System Cabling. There is hereby reserved for the benefit of Declarant, and its successors and assigns, nonexclusive easements over the Common Area (excluding Exclusive Use Common Areas) of access, ingress and egress to the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of master antennae, cable communications systems of all types including, but not limited to, cable television service lines to provide analog and digital cable television, broadband cable television and cable internet access services, alarm system cabling and all related facilities and equipment and for operations of said systems and services, which shall be solely for the benefit of Declarant and its successors in interests. Such easements shall be freely transferable to any other person or entity for the purpose of providing such services.

ARTICLE XIX

Rights of Declarant

Nothing contained herein shall in any manner restrict or prohibit Declarant from the right to use the Common Areas in connection with the construction and sale of the Condominiums in the Project and in connection therewith to: use vehicles and equipment on the Common Areas; operate and maintain upon the Project model complexes, together with parking areas and/or real estate sales and development businesses; and place, erect and maintain thereon such customary sales and advertising signs, offices and parking areas as is usual and reasonable for such real estate sales and development operations.

Declarant, on behalf of itself, its agents, employees, contractors, subcontractors, invitees, successors, assigns and other authorized personnel, reserves a non-exclusive easement, extending until the date which is three (3) years after one hundred percent (100%) of all Condominiums which may be constructed on the Property are sold in, over, under and through each and every part of the Project together with the right to transfer and grant the same without the consent of any other person or entity for the purpose set forth above and for the following purposes:

- A. Completion of original development of all portions of the Property including, without limitation, the Condominiums.
- B. Marketing and selling Condominiums including related marketing and promotional events.
- C. Customer relations and providing post-sale customer service to Owners.
- D. Leasing and reselling of Condominiums.
- E. Redesigning any portion of the Project, provided, that the Declarant's exercise of its redesign right shall be aesthetically consistent with the then existing theme

of the Project and shall be in conformance with the Condominium plan for the Project as the same may be amended.

F. Performing any and all work which may be required by any governmental agency in order to obtain certificates of occupancy for the Condominiums, acceptance of the Project by governmental agencies and release of bonds posted by Declarant or others to ensure performance.

Declarant shall also have a non-exclusive easement over each and every part of the Project, unlimited as to time, for the purpose of performing any work required by any governmental agency or any work required in order to obtain an exoneration of bonds posted by Declarant.

In connection with each of the foregoing purposes the Declarant shall have the right: (i) to perform any and all architectural, engineering, construction, excavation, landscaping or related work and activities; (ii) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) to display signs and erect, maintain and operate, for sales, resales and administrative purposes, model Condominiums and a fully staffed customer relations, services and sales and/or resales office complex within the Property; (iv) to perform maintenance, repair and replacement work on, and to make custom Improvements, alterations and additions to uncompleted Improvements; (v) to grant easements for utilities and other purposes related to the development of the Project provided that no such easement shall materially impair the ability of any Owner to use his Condominium or the Project; and (vi) to take such other action consistent with such easements.

Neither the Association nor any Owner (other than Declarant) shall enter any construction area within the Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction nor shall the Association or any Owner do anything to interfere with the right of Declarant to develop the Project. If any damage is occasioned to the Common Area by Declarant or its agents or employees, Declarant shall be obligated to repair the same.

Until three (3) years after the initial sales of all Units in the Project to individual Owners have closed, this Declaration cannot be amended to modify or eliminate this Article or any of the rights reserved to Declarant hereunder without the prior written approval of Declarant and any attempt to do so shall have no effect whatsoever.

ARTICLE XX

Property Rights of Owners

Section 1. Easements Reserved to Owners. Subject to the rights of Declarant as provided in Article XIX, every Owner of a Condominium shall have a non-exclusive easement of use and enjoyment in, to and throughout the Common Area of the Project, an easement for ingress to and egress from his Unit, which shall be perpetual and appurtenant to the Owners Unit, and for ingress, egress and support over and through the Common Area and Declarant hereby reserves the right to grant non-exclusive easements to Owners

for such purposes over all of the Common Area of the Project. Such non-exclusive easements shall be appurtenant to each Condominium and the Common Area but shall be subordinate to, and shall not interfere with, exclusive use easements appurtenant to Condominiums over the Common Area, if any. Each such easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:

A. The right of the Association to adopt Association Rules and Regulations regulating the use and enjoyment of the Residential Condominiums.

B. The right of the Association to borrow money to improve the Common Areas.

C. The right of the Association to grant and convey to any third party, permits, licenses, easements and rights of way in, on, over, or under the Common Areas for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities, and each purchaser, in accepting a deed to a Unit, expressly consents to such easement. However, no such easements may be granted if it would materially interfere with the use, occupancy, or enjoyment by any Owner of his Unit.

D. The right of the Declarant or its designees to enter on the Project to construct the Project and to make repairs and remedy construction defects; provided, however, that such entry shall not unreasonably interfere with the use of any occupied Unit unless authorized by the Owner.

E. The right of the Association, or its agents, upon reasonable notice, to enter any Unit to perform its obligations under this Declaration. In the event of an emergency situation, reasonable notice need not be given.

F. The right of Declarant and/or the Association to grant and convey exclusive easements to an Owner or Owners, over the Common Areas, excluding any Exclusive Use Common Area, for purposes reasonably related to an Owner's use and enjoyment of his Unit so long as the same shall not unreasonably interfere with the rights of another Owner.

Section 2. Delegation of Use. Any member may delegate in accordance with this Declaration, the Articles, or the Bylaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Administration. The Owners of Units covenant and agree that the administration of the Common Areas and the Association shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations of the Association.

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ARTICLE XXI

Eminent Domain

Section 1. Eminent Domain. The term "taking" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

Section 2. Project Condemnation. If there is a taking of an interest in all or part of the Project such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Owners of Units (a) not taken, or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively, the "Remaining Units") do not, by affirmative vote of at least a majority of their Voting Power, approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Area and the Remaining Units, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses.

Section 3. Condemnation of Common Area. If there is a taking of (a) all or any portion of the Common Area (other than any Exclusive Use Common Area), or any interest therein, other than the taking of an undivided interest therein taken as a result of the taking of a Condominium, then the award in condemnation shall be paid to the Association.

Section 4. Condemnation of Exclusive Use Common Area. If there is taking of all or any portion of an Exclusive Use Common Area which is not taken in connection with the taking of all or any portion of the Unit to which it is appurtenant, the award in condemnation shall be paid to the Owner of the Unit to which the taken Exclusive Use Common Area was appurtenant; provided, however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

Section 5. Condemnation of Condominiums. If there is taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; provided, however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

Section 6. Condemnation of Portions of Units.

A. Minor Takings Within Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units is not substantially and adversely affected, and (ii) restoration of such Units can be accomplished at a cost less than or equal to the sum of (A) the amount of the condemnation awards for such takings

plus (B) any amounts the Owners of the taken Units wish to contribute to restoration plus (C) an amount less than or equal to five percent (5%) of the total gross expenses of the Association (as set forth in the Budget) for that Fiscal Year (collectively, the "Allowable Cost"), then the Board shall contract for such restoration and levy a Special Assessment against the affected Units in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards. Owners' contributions and Special Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; provided, however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

B. Minor Takings Exceeding Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units is not substantially and adversely affected, and (ii) restoration of such Units can be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a special meeting of the Members (a "Special Meeting"). If more than fifty percent (50%) of the Members are represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Special Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Special Assessment against all units and the condemnation awards. Owner's contributions and Special Assessment shall be applied to such restoration.

C. Major Takings. If the requisite approval is not obtained at the Special Meeting referred to in subparagraph B of this Section 6, or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Condominiums; provided, however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Common Area shall become part of the Common Area, and the Owners of such taken Units, by acceptance of the award allotted to them in taking proceedings, hereby relinquish (i) to the Association such remaining portion of the taken Units and appurtenant Exclusive Use Common Area, and (ii) to the other Owners, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area. Each Owner relinquishing his or her ownership interest pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit shall not be liable for Assessment under this Declaration which accrue on or after the date such Owner accepts his or her condemnation award.

Section 7. Portions of Awards in Condemnation Not Compensatory for Value of Real Property. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

Section 8. Notice to Owners and Mortgagees. The Board, upon learning of any taking affecting a material portion of the Property, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on Condominiums in the Project who have filed a written request for such notice with the Association. The Board, upon learning of any taking affecting a Unit, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Unit who has filed a written request for such notice with the Association.

ARTICLE XXII

Protection of Mortgagees

Section 1. Subordination of Liens. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Project, or any Unit, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates his interest, in writing, to such lien.

Section 2. Material Amendments. If an Eligible Mortgage Holder informs the Association in writing of its appropriate address and requests in writing to be notified, the Association shall not make any material change to the Declaration, the Bylaws or the Articles unless agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of subdivision interests that are subject to Mortgages held by Eligible Mortgage Holders. The term "material amendment" is defined to mean amendments to provisions of any such documents governing the following subjects:

- A. Reallocation of interests of the Owners, if any, in the general or limited common elements of the Project or rights to their use.
- B. The fundamental purpose for which the Project was created (such as a change of the use of the Residential Condominiums from residential use to a different use).
- C. Voting rights.
- D. Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens and the priority of assessment liens.

E. Reductions in reserves for maintenance, repair and replacement of the Common Areas.

F. Responsibility for repair and maintenance obligations.

G. Hazard or fidelity insurance requirements.

H. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than in a manner substantially in accordance with the Declaration and the original plans and specifications.

I. Rights to use the Common Areas.

J. Expansion or contraction of the Project or the addition, annexation or withdrawal of Property to or from the Project.

K. Redefinition of the boundaries of any Unit.

L. Convertibility of Units into Common Area or of Common Area into Units.

M. Imposition of any restrictions on leasing of Units.

N. Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or convey his Unit.

O. If the Project consists of fifty (50) or more Units, to terminate professional management (but only if such professional management is required by this Declaration or by any Eligible Mortgage Holder and assume self control of the Project.

P. Any provision, which by its terms, is specifically for the benefit of First Mortgagees, Insurers, or Guarantors, or specifically confers rights on First Mortgagees, Insurers, or Guarantors.

An addition or amendment to the Declaration, the Articles or to the Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder or Eligible Guarantor or Insurer who receives a written request to approve additions or amendments, who does not deliver or post to the requesting party a negative response within sixty (60) days shall be deemed to have approved such request.

Section 3. Required Consent of Mortgagees. Unless at least two-thirds (66-2/3%) of the Eligible Mortgage Holders (based upon one vote for each Mortgage owned) of the individual Units or two-thirds (66-2/3%) of the Owners (other than the sponsor, developer, builder or Declarant) have given their prior written approval, neither the Association nor the Owners shall be entitled:

A. By act or omission to seek to abandon or terminate the Project, the case of a taking by condemnation or eminent domain or substantial loss or damage to the Common Areas, or for any other reason.

B. To change the pro rata interest or obligations of any Unit for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership, if any, in the Common Areas.

C. By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Association or the Owners shall not be deemed a transfer within the meaning of this clause.

D. To use hazard insurance proceeds for losses to the Common Areas in the Project or to use proceeds received from third party litigation for losses to, or claimed defects in, the Common Areas for other than the repair, replacement, or reconstruction of Improvements.

E. By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area.

F. Fail to maintain fire and extended coverage on insurable Association Improvements on a current replacement cost basis in any amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

G. To partition or subdivide any Unit.

Section 4. Examination of Books and Records by Mortgagees. First Mortgagees can examine and copy the books and records of the Association and can require the submission of financial data concerning the Association or the Project, free of charge, including annual audited financial statements for the immediately preceding fiscal year. Such financial statements shall be furnished within a reasonable time following such request.

Section 5. Priority of First Mortgagees - Insurance Proceeds and Condemnation Awards. No Owner, or any other party, shall have priority over any right of First Mortgagees of Units pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Unit or the Common Areas. 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 Mortgagees naming the Mortgagees, as their interests may appear.

Section 6. Notice to Mortgagees. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or

Guarantor, and the Unit number or address, such Eligible Mortgage Holder or insurer or guarantor will be entitled to timely written notice of:

A. Any loss casualty to any Dwelling Unit covered by a Mortgage, if such loss exceeds One Thousand Dollars (\$1,000), or any loss to the Common Areas if such loss exceeds Ten Thousand Dollars (\$10,000) or on any taking of the Common Areas.

B. Any default in performance of obligations under the Declaration, the Articles, or the Bylaws or Rules and Regulations adopted by the Association, which default is not cured within sixty (60) days after written notice to such Owner.

C. Any lapse, cancellation or material modification of any fidelity bond required to be maintained by the Association or of any insurance policy required to be maintained by the Association.

D. Any proposed action which would require the consent of Mortgagees as specified in Sections 2 and 3 of this Article.

E. Change of the purposes to which any Unit or the Common Areas are restricted.

Section 7. Effect of Foreclosure by First Mortgagee.

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

B. If any Unit 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 operate to affect or impair the lien of the Mortgage. On exercise of power of sale or judicial foreclosure of the First Mortgage, or acceptance of a deed in lieu of foreclosure, the lien for assessments or installments that has accrued up to the time of foreclosure or acceptance of a deed in lieu of foreclosure, shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser-grantee taking title to the Unit free of the lien for assessments, or installments that have accrued up to the time of the foreclosure sale. On taking title to the Unit, the foreclosure-purchaser-grantee shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser-grantee acquired title to the Unit. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser-grantee, and his successors and assigns, are required to pay their proportionate share as provided in this Article.

C. Any Mortgagee who acquires title to a Unit 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 of a type that is not practical or feasible to cure.

D. Any Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by foreclosure or by a deed in lieu of foreclosure or by 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.

Section 8. Mortgagee's Attendance at Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) 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 or for any other purpose. Written notice of any or all meetings of the Members and the Board will be provided to any Mortgagee upon its written request.

Section 9. Providing Information to Board. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

Section 10. Restriction on Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Unit shall be granted to the Association without the consent of any Mortgagee, of the Unit. Any right of first refusal or option to purchase a Unit 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 Unit, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure.

Any right of first refusal shall not impair the rights of a First Mortgagee to: (a) foreclosure or take title to a Unit pursuant to the remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or (c) sell or lease a Unit acquired by the First Mortgagee.

Section 11. Termination of Certain Contracts. Any contract for professional management of the Project, or any other contract providing for services by Declarant, lease of recreational or parking areas or facilities by Declarant, any contract or lease, including franchises and licenses to which Declarant is a party shall provide for termination by either party with or without cause and without payment of a termination fee upon no more than thirty (30) days written notice. Such agreement shall be renewable with the consent of the Board and the management agent. No contract with the Association negotiated by Declarant shall exceed a term of one (1) year.

Section 12. Tax Liens. All taxes, assessments and charges which may become liens prior to the First Mortgage under the local law, shall relate only to the individual Units and not to the Project as a whole.

Section 13. Reserves for Maintenance. Assessments on Units shall include an adequate reserve for maintenance, repairs and replacement of the Common Area facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

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Section 14. Termination of the Project. Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project must require the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgage Holders and sixty-seven percent (67%) of the Owners.

Section 15. Reallocation of Interests. No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Project may be affected without the prior approval of Eligible Mortgage Holders holding Mortgages on all remaining Units, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Units subject to Eligible Mortgage Holders and the vote of sixty-seven percent (67%) of the Owners.

Section 16. Payment of Taxes and Premiums. First Mortgagees may, jointly or singly, pay taxes or other charges which may or have become a charge against the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for the Common Areas and First Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association, provided that said First Mortgagees have given notice to the Association prior to the making of such payments and the Association has failed to pay the same.

Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees of Units to be executed by the Association. An original copy of such agreement shall be possessed by the Declarant.

Section 17. Conflict. If there is any conflict between any Section of this Article and any other provision of this Declaration, or the Bylaws of the Association, the language contained in this Article shall control.

ARTICLE XXIII

Amendments

Section 1. Prior to Sale of a Unit. Before the close of the first sale in the Project 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 of an instrument amending and revoking this 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 where the Project is located.

Section 2. After Close of First Sale. After the close of the first sale of a Condominium in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect as follows: (1) if a two class voting structure is still in effect in the Association, this Declaration may be amended only with the vote or written consent of Members entitled to cast at least fifty-one percent (51%) of the Voting Power of each class of members in the Association; (2) if a two class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership as provided herein, this Declaration may be amended only with the vote or

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written assent of: (i) Members holding fifty-one percent (51%) of the Voting Power of the Association; and (ii) Members holding fifty-one percent (51%) of the Voting Power held by Members other than Declarant.

Notwithstanding the foregoing, if any provision of this Declaration requires a greater or lesser percentage of the Voting Power of any class of Members (e.g. Residential, Live/Work or Commercial) 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 need only 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 where the Project is located.

Notwithstanding anything contained in this Declaration to the contrary, any provision of this Declaration which is solely for the benefit of Commercial Condominium Owners may not be amended or rescinded without the written consent of Commercial Condominium Owners owning a majority of the Voting Power of all Commercial Condominium Owners.

Section 3. Amendment to Meet Requirements of Mortgagees and Governmental Agencies. It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Condominium in the Project by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veteran's Administration. In furtherance of that intent, Declarant expressly reserves the right and shall be entitled by unilateral amendment of the Declaration so long as Declarant owns more than twenty-five percent (25%) of the Condominiums in the Project to amend this Declaration in order to incorporate any provisions or to enter into any agreement on behalf of and in the name of the Association that are, in the opinion of any of the cited entities or governmental agencies, required to conform to the Declaration, the Articles, the Bylaws or the Project to the requirements of any of the entities or governmental agencies, including without limitation, the execution on behalf of and in the name of the Association of a regulatory agreement between the Association and the Federal Housing Commissioner and any other agreement sufficient to satisfy the requirements for Mortgage purchase, guarantee or insurance by any of said entities or agencies. Each Owner does hereby grant Declarant an irrevocable power of attorney coupled with an interest to execute any such amendment or agreement by and in the name of the Association and each Owner. Any such provision shall first be approved by the California Department of Real Estate in connection with its issuance of a final subdivision public report or amendment to it with respect to the Project. Each Owner of a Condominium and each Mortgagee of a Condominium by acceptance of a deed or encumbrance of a Condominium, consents to the incorporation in this Declaration of any such provisions and to the execution of any

amendment or regulatory agreement and agrees to be bound by any such provisions as if they were incorporated in this Declaration. The Board and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration or the Project to the requirements of any of said entities or agencies.

Section 4. Petition to Superior Court. If in order to amend the Declaration, the Declaration requires Owners having more than fifty percent (50%) of the Voting Power in the Association, in a single class voting structure, or Owners having more than fifty percent (50%) of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the Association, or any Owner of a separate interest, may petition the Superior Court of the county in which the Project is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the Association Members in the manner provided in the Declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- A. The Governing Documents.
- B. The complete text of the amendment.
- C. Copies of any notice and solicitation materials utilized in the solicitation of Owner approvals.
- D. A short explanation of the reason for the amendment.
- E. Any other documentation relevant to the court's determination.

Section 5. Compliance with Law. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent said Section is applicable.

Section 6. Presumption of Validity. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XXIV

Enforcement

Each and every covenant, condition, restriction and easement herein contained and in the Bylaws, Articles of Incorporation and Rules and Regulations shall be for the benefit of any and all persons who now own or who may hereafter own any portion of the Project, and all such persons are specifically given the right to enforce the same at law or in equity, and upon the filing of any action to enforce the same, judgment may be given for attorneys fees against the party found to be in breach in favor of the party seeking enforcement.

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Enforcement of these covenants and restrictions, the Bylaws, Articles of Incorporation and any Rules and Regulations may be sought by the Association or any Owner and shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation by way of injunctive relief or to recover damages, and against the land to enforce any lien created by these covenants, and failure by Declarant, the Board or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, nor shall any such failure to enforce the same or any other violation of such covenants or restrictions impair or invalidate the lien of any First Mortgage or first Deed of Trust made in good faith and for value.

ARTICLE XXV

Term and Termination

Section 1. Term. Except in the event of earlier termination as provided herein, the covenants, conditions and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by Declarant, the Board, or the Owner of any Condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) 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, unless an instrument signed by Owners holding a majority of the Voting Power of the Association has been recorded within one (1) year prior to the termination of the forty (40) year period or within one (1) year prior to the termination of any successive ten (10) year period, agreeing to terminate said covenants, conditions and restrictions, in whole or in part.

Section 2. Termination. This Declaration may be terminated upon the vote or written consent of Members holding sixty-seven percent (67%) of the Voting Power of the Association and sixty-seven percent (67%) of Eligible Mortgagees and the VA (if the VA holds a Mortgage on a Unit), if termination is for reasons other than substantial destruction or a substantial taking in condemnation.

ARTICLE XXVI

Enforcement of Bonded Obligations

If Common Area Improvements which are included in the subdivision offering covering this Project have not been completed prior to the issuance of a Final Subdivision Report and the Association is an obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure performance of the commitment of the Declarant pursuant to such subdivision offering to complete the Improvements, then the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of such Declarant and the surety under the Bond shall govern:

A. The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty

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(60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement to the Common Areas, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

B. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question may be held. Said special meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total Voting Power of the Association.

C. At any special meeting called for the purpose set forth in Subparagraph B above, the vote shall be by Members of the Association other than Declarant.

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

ARTICLE XXVII

Right of Owner of Unit to Make Improvements or Modifications

Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the Owner of the separate interest may do the following:

A. Make any Improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Project.

B. Modify a Unit in the Project, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Unit for the purposes of this Paragraph if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this Paragraph is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements.

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

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(3) Modifications external to the Unit shall not prevent reasonable passage by other residents and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(4) Except as herein otherwise provided, any Owner who intends to modify a Unit pursuant to this paragraph shall submit his or her plans and specifications to the Architectural Committee of the Project for review to determine whether the modifications will comply with the provisions of this paragraph. The Association shall not deny approval of the proposed modifications under this Paragraph without good cause.

Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

ARTICLE XXVIII

Documents to be Provided to Prospective Purchaser

The Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

- A. A copy of the governing documents of the Condominium Project.
- B. If there is a restriction in the governing documents limiting the occupancy, residency or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3, a statement that the restriction is only enforceable to the extent permitted by said Section, and a statement specifying the applicable provisions of said Section.
- C. A copy of the Association's most recent financial statement distributed in accordance with Section 1365 of the California Civil Code.
- D. A true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees as well as any assessments levied upon the Owner's interest in his Condominium and the Project which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's interest in the Project pursuant to Section 1367 of the California Civil Code.
- E. Any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, that have not become due and payable as of the date disclosure is provided pursuant to this Article.

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Upon written request the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with a copy of the requested items specified in subparagraphs A, B, C, D and E of this Article. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

ARTICLE XXIX

Resolution of Disputes

Section 1. Disputes. IF ANY DISPUTE SHOULD ARISE BETWEEN THE ASSOCIATION AND/OR AN OWNER OR OWNERS ON THE ONE PART ("CLAIMANT") AND THE DECLARANT, OR ANY OFFICER, DIRECTOR, MANAGER, SHAREHOLDER, PARTNER, MEMBER, EMPLOYER, CONTRACTOR, SUBCONTRACTOR, MATERIAL SUPPLIER, DESIGN PROFESSIONALS, PROPERTY MANAGER, EMPLOYEE, OR AGENT OF THE DECLARANT ON THE OTHER PART (HEREAFTER COLLECTIVELY THE "DECLARANT GROUP") WHETHER THE DISPUTE ARISES UNDER THE DECLARATION OF ANY OTHER MANAGEMENT DOCUMENT, OR RELATING TO ANY CLAIM OF DEFECTS IN CONSTRUCTION OF THE PROJECT OR ANY INDIVIDUAL, OR GROUP OF INDIVIDUAL CONDOMINIUMS, OR FOR BREACH OF ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, NEGLIGENT MISREPRESENTATION, LATENT OR PATENT DEFECTS, NEGLIGENCE, NON-DISCLOSURE, FRAUD, BREACH OF CONTRACT, OR OTHERWISE (A "DISPUTE"), THE DISPUTE SHALL BE RESOLVED IN THE MANNER PROVIDED IN THIS ARTICLE XXIX WHICH PROVIDES FOR ARBITRATION AND WAIVERS OF THE RIGHT TO LITIGATE AND A JURY TRIAL.

A. Notification. Claimant shall provide Declarant with written notice (the "Dispute Notice") of any matters relating to a Dispute, as soon as reasonably possible after Claimant becomes aware of such matters or dispute (a "Claim"). The Dispute Notice shall describe the Claim in reasonable detail sufficient to enable Seller to determine the nature and extent of the Claim.

B. Cooperation; Access. Upon receipt of the Dispute Notice, the parties shall meet and attempt in good faith to resolve the Claim. Claimant agrees to provide Declarant and its representatives with prompt, reasonable cooperation, which may, for example, include access to the Project and/or Claimant's condominium in order to facilitate Declarant's investigation regarding the Claim, including without limitation, for purposes of inspecting, testing, repairing, replacing, correcting or otherwise addressing matters related to the dispute. If Declarant or any member of the Declarant Group elects to take any corrective action and Claimant agrees to accept such action, Declarant and its representatives shall be provided full access to the Project and Claimant's condominium to take and complete the corrective action.

Section 2. Construction Defects. Before the Association, or an Owner or Owners commence an arbitration proceeding claiming damages against Declarant or any member of the Declarant Group based on a claim for defects in the Project (as specified in Civil Code Section 896), or any individual or group of individual Condominiums in the Project, the Association or Owner or Owners must first comply with all of the requirements of the

Prelitigation Procedure set forth in California Civil Code Sections 910 through 938 as amended from time to time, as Declarant has elected to use the non adversarial procedure set forth in said sections. Further, in the event the Claim involves the Association, the Association may not commence arbitration proceedings against Declarant without first obtaining the vote or consent of a majority of the Owners (excluding Declarant). The Prelitigation Procedure impacts the legal rights of a purchaser of a Condominium including successors to the initial purchaser. Attached hereto marked Exhibit "B" and by this reference made a part hereof is a copy of the Prelitigation Procedure.

In the event that after complying with the Prelitigation Procedure, the parties are unable to resolve the dispute, the matter shall be referred to binding arbitration in accordance with the provisions of Sections 4, 5 and 6 below.

Section 3. Non Construction Disputes. Any other dispute arising between the Association and/or an Owner or Owners on the one part and any member of the Declarant Group on the other part shall, except for failure of Declarant to pay assessments, and except for an action for declaratory relief or injunctive relief related to the enforcement of this Declaration or Bylaws or the Articles or the Rules and Regulations, be resolved in accordance with the provisions of this Article XXIX hereafter set forth. Resolution of a dispute arising under this section by binding arbitration shall be in lieu of and in satisfaction of the requirements of Civil Code Section 1354 relating to Alternative Dispute Resolution.

Section 4. Binding Arbitration. IF ANY DISPUTES UNDER SECTIONS 2 AND 3 ABOVE SHALL, FOR ANY REASON WHATSOEVER, BE UNRESOLVED, SAID DISPUTE SHALL, BE SUBMITTED TO BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT ("FAA") AND THE CALIFORNIA ARBITRATION ACT ("CAA"). IF THE CLAIM INVOLVES THE ASSOCIATION, IT SHALL ALSO BE SUBMITTED TO ARBITRATION PROVIDED THE BOARD HAS FIRST OBTAINED THE VOTE OR WRITTEN CONSENT OF A MAJORITY OF THE VOTING POWER OF THE ASSOCIATION. IF ANY PROVISIONS OF THE CAA ARE IN CONFLICT WITH THE FAA, THE PROVISIONS OF THE FAA SHALL CONTROL.

Section 5. Forum for Arbitration. All disputes shall be submitted to binding arbitration by and pursuant to the streamlined arbitration rules and procedures of Judicial Arbitration and Mediation Services ("JAMS") in effect at the time of the initiation of the arbitration. In the event JAMS is for any reason unwilling or unable to serve as the arbitration service, the parties shall select another reputable arbitration service. If the parties are unable to agree on an alternative service, then either party may petition any court of competent jurisdiction in the county in which the subject property is located to appoint such an alternative service, which shall be binding on the parties. The rules and procedures of such alternative service in effect at the time the request for arbitration is submitted shall be followed.

Section 6. General Arbitration Provisions.

(1) The parties expressly agree that the transaction involving a dispute pertaining to the Project and/or Claimant's condominium involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act.

Accordingly, any and all Disputes shall be arbitrated, which arbitration shall be mandatory and binding, pursuant to the Federal Arbitration Act.

(2) Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the dispute shall be considered communications undertaken in the course of effecting a settlement and compromise and, as such, shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any purpose in any arbitration proceeding.

(3) The arbitration shall not be deemed a waiver of the attorney/client or attorney/work product privilege.

(4) The proceeding shall be held in the County where the Project is located.

(5) The proceeding shall commence on a date agreed to by the parties and, if the parties cannot agree, then at a date determined by the arbitrator.

(6) The parties shall promptly and diligently cooperate with one another and the arbitrator, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.

(7) The arbitrator shall have the power to decide all discovery disputes and all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before him/her. The arbitrator shall conduct neutral and impartial proceedings in accordance with rules and procedures which are fair and reasonable to the parties.

(8) The arbitrator shall be selected according to the procedures of JAMS. The arbitrator appointed to serve shall be a neutral and impartial person.

(9) Declarant shall advance all fees necessary to initiate the arbitration, and subsequent fees and costs of the arbitration and/or the arbitrator shall be paid equally by the parties to the arbitration, with the costs and fees of the arbitration and/or the arbitrator to ultimately be borne as determined by the arbitrator.

(10) A stenographic record of the proceeding shall be made if requested by the parties.

(11) The decision of the arbitrator upon all of the issues shall be final and binding upon the parties.

(12) If the Association or any Owner shall breach the provisions of this paragraph, Declarant shall be entitled to injunctive relief (without the necessity of proving any damages) to compel the Association and/or Owner to comply with the procedures set forth in this Article.

(13) The arbitrator shall not have the power or authority to award attorney's and/or expert (consultant) fees. Each party shall be obligated to pay its own attorney's and expert fees even though a party is determined to be the prevailing party by the arbitrator.

Section 7. Parties Benefitted. This Article XXIX shall inure to the benefit of, and be enforceable by, Declarant's contractors, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person who Claimant and/or Declarant contend is responsible, in whole or in part, for any Dispute, including without limitation, any alleged defect in or to Claimant's condominium or the Project, or any improvement or appurtenance thereto. The parties contemplate the inclusion of such parties in any arbitration of a dispute and agree that the inclusion of such parties will not effect the enforceability of this arbitration agreement.

Section 8. Severability. If any provision of this Article XXIX shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

Section 9. Option of Nonbinding Mediation for Unresolved Dispute. If the Association/Owner or Declarant or any person or entity involved in a Dispute cannot informally resolve the Dispute to their mutual satisfaction and would prefer to attempt a resolution before proceeding in the manner set forth in this Article XXIX, then, if the parties agree, the matter may be submitted to a non-binding mediation before a neutral, knowledgeable and experienced mediator mutually agreeable to the parties at JAMS/ENDISPUTE or any mutually acceptable alternative dispute resolution provider. The parties may design the mediation process to best suit their mutual needs. Before the mediation, the parties shall execute an agreement pursuant to *California Evidence Code* §1119 and agree that the mediation as well as any resolution is confidential, not to be revealed to any person or entity beyond the parties and their attorneys, if any.

Section 10. Injunctive Relief. If the Association or any Owner shall breach the provisions of this Article, Declarant shall be entitled to injunctive relief (without the necessity of proving any damages) to compel the Association and/or Owner to comply with the procedures set forth in this Article.

Section 11. No Amendment Without Consent. Notwithstanding any other provision or this Declaration neither this Article nor any provision hereof shall be amended, altered, rescinded, or deleted without the written consent of Declarant.

Section 12. Disputes Relating To Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or other governing documents of the Association, the issue or issues shall attempted to be resolved pursuant to the Dispute Resolution Procedure set forth in the Bylaws and if the dispute is not resolved in that manner, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. Where a vote or written assent is required, either for or against an

action, the arbitrator shall be considered a provisional director and/or member of the Association who is authorized to attend any regular, special or adjourned meeting of the Association. In the event of referral to arbitration, the Owner requesting arbitration shall remit the fee to initiate the arbitration. However, the final cost of said arbitration shall ultimately be borne as determined by the arbitrator.

Section 13. Waivers of Right to Litigate and Jury Trial. BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER, AND THE ASSOCIATION, SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE PROVISIONS HEREOF. DECLARANT, THE ASSOCIATION, AND EACH OWNER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT WITH A JURY TRIAL AND ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "RESOLUTION OF DISPUTES" ARTICLE. IF DECLARANT, THE ASSOCIATION, AND/OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE.

Section 14. Judicial Reference of Construction Defect Claims. Solely in the event that the binding arbitration provisions herein should be challenged and found by a final order of court of competent jurisdiction to be unenforceable or otherwise inapplicable, then all unresolved construction defect and other claims shall be resolved by general judicial reference pursuant to *California Code of Civil Procedures* §§638 and 641 through 645.1, or any successor and companion statutes. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included.

ARTICLE XXX

Mold

In recent years, mold has received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Owner's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who or what may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase mold levels within the Unit. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Owner to monitor and maintain his or her Unit so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to,

cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

ARTICLE XXXI

Inspection Obligation

A. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations set forth in paragraph P (1) of Section 3 of Article V) or otherwise retain the services of independent, qualified, licensed individuals or entities (hereafter "Inspectors") to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Project. The costs of the inspection obligation imposed upon the Association hereunder shall be an expense of the Association and included in the budget for the Project.

B. The Inspectors shall inspect all component parts of the Project including, but not limited to, structural components, elevators, HVAC systems, parking areas, walkways, and landscaping. If any of the contractors or subcontractors responsible for constructing any component part of the Project provide the Association with the maintenance criteria, maintenance manuals, or warranty requirements, the Inspectors shall additionally assist the Association with compliance with the same. The Association shall be responsible for meeting all requirements under such maintenance manuals, maintenance criteria, or warranty requirements.

C. Commencing twelve (12) months following the conveyance of the first Unit in the Project, and for a period of ten (10) years thereafter, such inspections shall take place at least once every year (or more often if required by any maintenance manual, maintenance criteria, or warranty requirements). The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify all items of maintenance or repair which either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association within thirty (30) days following receipt of such written reports and shall include such written reports in the minutes of the Association. Subject to the provisions of subparagraph D 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 inspections and in accordance with any Guides prepared by Declarant for maintenance of the Project.

D. The Association shall cause the Declarant (or its designees) to receive ten (10) days advance written notice of all such 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. In the event, based upon such inspection, any items are identified by the Inspector as being the result of construction defects or other matters for which the Declarant or any contractor, subcontractor, architect, materialman, or similar individual or entity could be held liable (collectively "construction defect"), the Association shall request, in writing (a copy of which

shall be delivered to Declarant or its designee), that the Declarant or such responsible individual or entity take all necessary steps to remedy such construction defect. The party receiving such written request shall, if it elects to take action relative to such request, be given reasonable access to the Project and an opportunity to take all action and do all things necessary to remedy such situation.

E. If, in the opinion of the Declarant or other responsible individual or entity, the matters so identified are not the result of construction defects, or if the party receiving such notice fails to take action to remedy such situation (and following commencement diligently prosecute the same to conclusion) within one hundred twenty (120) days of the date of such written request, the matter shall be submitted to and settled by binding judicial reference or arbitration in accordance with the provisions of Article XXIX. If it is determined by the judicial reference or arbitration that such condition is not the result of a construction defect, which determination shall be binding, the Board shall promptly cause all action necessary to remedy such condition to be commenced and diligently prosecuted to completion.

F. The foregoing provisions are for the benefit of, among others, the Declarant, who is a third party beneficiary thereof and the provisions of this Article XXXII may not be amended, rescinded, altered or deleted for a period of ten (10) years following the conveyance of the first Residential Unit in the Project, unless Declarant consents in writing to the same.

ARTICLE XXXII

Mixed Use Project

Each Owner, by acceptance of a deed to his or her Unit, acknowledges that the Project is a "mixed-use" project, including both residential and commercial elements. Each Owner recognizes and accepts that combining commercial and residential uses may present a number of issues and concerns which may not otherwise be present in a strictly residential project, including, without limitation, additional noise, odors, fumes (including, without limitation, diesel bus fumes from buses operating on main street), smoke (including, without limitation, exhaust from restaurants operated within a Commercial Condominium), vehicular traffic, pedestrian traffic, diminished security, and other similar issues and/or disturbances associated with any area where commercial activity is present or prevalent. Each Residential and Live/Work Owner agrees to abide by any provisions herein which delegate to the Commercial Owners certain rights to regulate and/or operate the Commercial Condominiums without interference by Residential and Live/Work Owners and/or the Directors. Specifically, and notwithstanding any other provision in this Declaration, under no circumstances shall any Residential and Live/Work Owner have any right to object to, nor in any way to interfere with, any use, operation, further subdivision, demising, leasing, subleasing, or any other matter concerning or related to the Commercial Condominiums, provided that such Commercial Condominiums and the Owners thereof are in compliance with the applicable provisions of this Declaration.

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ARTICLE XXXIII

Combination of Units

An Owner of a Unit shall have the right to combine two (2) or more contiguous Units, provided:

A. The Owner obtains prior Board approval of the same, which may include approval of the applicable plans and specifications by the Architectural Committee; provided, however, such approval shall not be required if such combination occurs during the initial construction of the Project by Declarant;

B. The Owner must obtain all required governmental permits inspections and approvals, and such modifications and alterations are consistent with applicable building code requirements;

C. The Owner shall be obligated to pay the Assessments attributable to each Unit so combined;

D. Once so combined, said Units shall not be separately conveyed or encumbered;

E. No action, in so combining the Units, shall adversely impact the Unit(s) above or below such Units or the Common Area, including encroaching thereon or changing or modifying building systems or the load-bearing components thereof, or impairing or interfering with the structural integrity or mechanical systems of the Project; and

F. The Owner shall pay all costs associated with combining the Units, including without limitation, any architectural and engineering fees associated therewith.

ARTICLE XXXIV

Power to Correct Condominium Plan

Declarant and the Association are hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in the Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyance or partial reconveyance necessary to correct such errors. The power hereby given to the Declarant and the Association is limited in the following respects:

A. The power may be exercised only to correct errors in the Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan. The power hereby given may not be utilized for any other purpose.

B. The power may not be exercised on behalf of an Owner or Mortgagee if the Owner's Unit or Exclusive Use Common Area would be reduced in size by reason of the correction.

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement or revocation recorded with the Los Angeles County Recorder's Office.

ARTICLE XXXV

Maintenance Obligations

If Declarant shall have provided a Maintenance Manual for the Project, in addition to the Association's general maintenance obligations set forth in this Declaration, the Association and the Owners shall, at all times, perform, as recommended in the Maintenance Manual for the Project prepared by Declarant, all necessary routine maintenance, maintenance inspections and any other necessary repairs and maintenance called for as a result of the inspections and the recommendations set forth in the Maintenance Manual.

ARTICLE XXXVI

Rights of Mortgagees

A. A Mortgagee shall not be entitled to receive any notice required to be given under this Declaration unless and until such Mortgagee shall have delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a specified Unit within the Project. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

B. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Unit, but all liens and encumbrances of said covenants, conditions or restrictions (including, without limitation, the lien to secure Assessments provided in Article VII arising from and after foreclosure of such Mortgage or otherwise applying shall bind the foreclosing Mortgagee, if said Mortgagee acquires title, and any Owner whose title is derived therefrom.

C. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale under a Mortgage made in good faith and for value, shall acquire title free of any lien or claim for unpaid Assessments against such Unit(s) that accrued prior to the time such Mortgagee or transferee takes title to such Unit. In addition, such Mortgagee or transferee shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type that is impractical or infeasible to cure. The Board's reasonable determination,

made in good faith, as to whether a breach is noncurable or infeasible to cure, shall be final and binding on all Mortgagees and transferees.

D. Where any action requires the vote or consent of a specific percentage of Mortgagees, Mortgagees holding First Mortgages on more than one Unit shall be entitled to one vote for each Unit, subject to such First Mortgage.

ARTICLE XXXVII

Availability of Documents

Association shall be required to make available to Owners, lenders and the holders and insurers of the First Mortgage on any Unit, current copies of this Articles of Incorporation and Bylaws of the Association, and other rules governing the Project and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers of Unit(s) current copies of the Declaration, Articles of Incorporation and Bylaws of the Association, and other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared.

"Available" shall at least mean availability for inspection upon request, during normal business hours or under other reasonable circumstances.

ARTICLE XXXVII

General Provisions

Section 1. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project.

Section 2. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, the same shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to each such person at the address given by such person to the Board for the purpose of service, or to such person's Unit, if no address has been given to the Board. An address may for any reason be changed from time to time by notice in writing to the Board.

Section 3. Violation Deemed a Nuisance. Every act or omission in violation of any covenant, condition, or restriction herein set forth shall constitute a nuisance, and in addition to the legal remedies hereinbefore set forth, may be abated or enjoined by any Owner or any member of the Board.

Section 4. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns, grantees and lessees of the Declarant and each Owner. This Declaration shall run with the

land, and shall continue in full force and effect until (i) terminated by a court of competent jurisdiction pursuant to law, or (ii) in the event of the total destruction of the Improvements on the Property and a subsequent determination of the Owners not to rebuild the same, or a total abandonment of said Improvements by the Owners, or as hereinabove provided. Each purchaser by accepting a deed or valid contract of sale to any individual Condominium, accepts the same subject to all the covenants, conditions and restrictions herein contained, and agrees to be bound by each and all thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

Section 5. No Restrictions for Race, Color or Creed. No Owner shall execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his Condominium on the basis of race, color or creed.

Section 6. Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive.

Section 7. Notice of Sale or Lease of Condominium. Within five (5) business days after the consummation of the sale, transfer or lease of any Condominium under circumstances whereby the transferee becomes an Owner or lessee thereof, the transferee, or the Owner in the case of a lease, shall notify the Board in writing of such sale or lease. Such notification shall set forth (i) the names of the transferee or lessee and his transferor or lessor, (ii) the street address or Unit number of the Condominium purchased or leased by the transferee, (iii) the number and names of all persons and the ages of all minors who intend to occupy said Unit, (iv) the transferee's mailing address, and (v) the date of sale or lease. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, the Board or the Board or any agent or representative thereof shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor or lessor.

Section 8. 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 include the masculine, feminine or neuter as the context requires.

Section 9. 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. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null, void, against public policy, or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in full and effect to the fullest extent permissible by law.

Section 10. Purchasers. Each purchaser, by accepting a deed or a valid contract of sale to any Unit accepts the same, subject to all of the covenants, conditions and restrictions herein contained and agrees to be bound by each and all thereof.

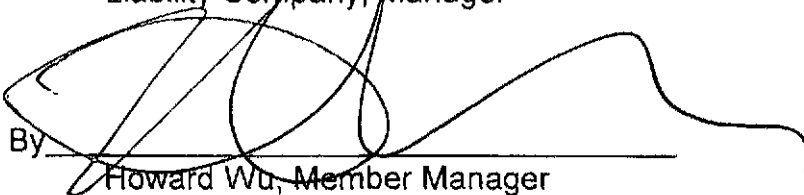
Section 11. Construction and Conflicts. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of

a planned unit development project. In the event of any conflict between this Declaration and the Bylaws of the Association, this Declaration shall control.

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

1400 MISSION FREMONT, LLC, a
Delaware Limited Liability Company
By: Urban Commons, a Delaware Limited
Liability Company, Manager

By



Howard Wu, Member Manager

By



Taylor Woods, Member Manager

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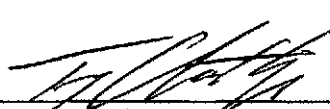
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

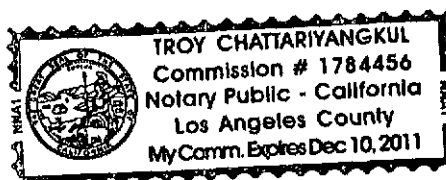
On April 21, 2010, before me, Troy CHATTARIYANGKUL, a notary public, personally appeared HOWARD WU, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 in and for said County and State



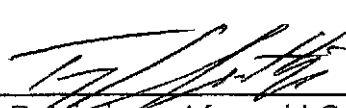
[Seal]

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

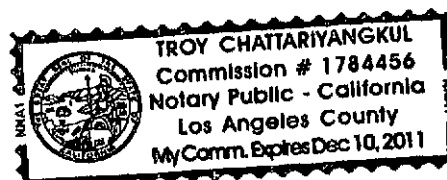
On April 21, 2010, before me, Troy CHATTARIYANGKUL, a notary public, personally appeared TAYLOR WOODS, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 in and for said County and State



[Seal]

EXHIBIT "A"

Prelitigation Procedure

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal

representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the Claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual

provisions are successful in resolving the dispute or ultimately deemed enforceable. At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative -- resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding; this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier; warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any; shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims

involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the time frame for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the time frames set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed by the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to, effectuate a repair of the claimed unmet standards, and compensate the

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homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity, in writing, the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her

legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, Unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the time frames mandated, unless extended by the mutual agreement of the parties as evidenced by a post-claim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory time frame, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made, may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the *Civil Code*, but an action is subsequently commenced under Section 1375 of the *Civil Code*, the parties are excused from performing the substantially similar requirements under Section 1375 of the *Civil Code*.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the *Code of Civil Procedure* or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.

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SUBORDINATION

The undersigned beneficiary under that certain deed of trust recorded August 19, 2009, as Instrument No. 2009-1277983, Official Records, Los Angeles, County, California, does hereby consent to each and all of the provisions contained in the within Declaration of Covenants, Conditions and Restrictions and any amendments and annexations thereto and the entire effect thereto and does hereby agree that the lien and charge of said deed of trust shall be and is hereby made subordinate to, junior to and subject to the Declaration of Covenants, Conditions and Restrictions and any amendments and annexations thereto and the entire effect thereof.

Dated: April 20, 2010

WILSHIRE STATE BANK

By Don T. Young Don T. Young
Title: SVP/Manager

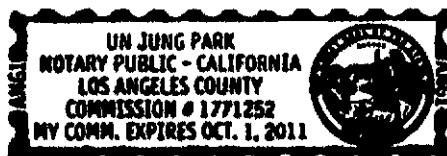
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On 4-20, 2010 before me UN JUNG PARK, a notary public, personally appeared DON T. YOUNG, 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 capacities, 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 in and for said County and State



(Seal)