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Block 0766 / Lot 10

SPACE ABOVE FOR RECORDER'S USE ONLY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

ELEVANT

SECTION 15.5 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

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EXHIBIT "E"	PARKING SPACES

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ELEVANT

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ELEVANT ("**Declaration**") is made this 29th day of June, 2020 by 555 GOLDEN GATE AVENUE, LLC, a California limited liability company ("**Declarant**") with reference to the facts set forth below.

RECITALS

All initially capitalized terms used but not defined in the Recitals are defined in **ARTICLE 1**.

A. **Property Owned by Declarant.** Declarant is the owner of the real property situated in the City and County of San Francisco, State of California, more particularly described on **Exhibit "A"** ("**Property**").

B. **Nature of Community.** Declarant intends to establish a plan of condominium ownership and to develop the Property as a condominium community within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 4125, to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, *et seq.*) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 4000 *et seq.* To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Residential Units, the Commercial Units, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

C. **Description of Community.** Declarant intends to develop a mixed use residential and commercial development on the Property consisting of fifty-five (55) Residential Condominiums and two (2) Commercial Condominiums. Owners of a Condominium will receive title to a Unit plus an undivided fractional interest as tenant in common to the Common Area. Each Residential Owner will receive certain easements for ingress, egress, use and enjoyment over the Association Property designated on the Condominium Plan and each Commercial Owner will receive certain easements for ingress, egress, use and enjoyment over portions of the Association Property specified for use by the Commercial Owners in the Governing Documents. In addition, certain Residential Owners will receive the exclusive right of use and occupancy of a portion of the Association Property designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan. Such easements are more particularly described in this Declaration and the deeds conveying the Units to the Owners. Each Condominium shall have appurtenant to it a membership in the Association.

DECLARATION

NOW THEREFORE, Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Section 4000 *et seq.* for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and appearance of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens and charges and shall run with the Property, shall be binding on and inure to the benefit of Declarant and all Owners having or acquiring any right, title or interest in the Property and shall be enforceable equitable servitudes. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 5975.

ARTICLE 1 DEFINITIONS

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

1.1 “**Additional Charges**” means costs, fees, charges and expenditures, including without limitation, attorneys’ fees and costs, administrative fees, late charges, interest and recording and filing fees, actually incurred by the Association in collecting and/or enforcing payment of Assessments, and other amounts levied under this Declaration. Additional Charges include, without limitation, the following:

1.1.1 Reasonable attorneys’ fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise;

1.1.2 A late charge in an amount to be fixed by the Association in accordance with California Civil Code Section 5650 to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any “grace” period established by Applicable Laws;

1.1.3 Costs of suit and court costs incurred as are allowed by the court;

1.1.4 Interest at the Applicable Rate; and

1.1.5 Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments.

1.2 “**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person. “**Control**” as used herein means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

1.3 “**Applicable Laws**” means the Governmental Entitlements and any law, regulation, rule, order and ordinance which is applicable to the Community now in effect or as hereafter promulgated.

1.4 “**Applicable Rate**” means the rate of interest chargeable under this Declaration equal to the rate established by the Association from time to time, but not to exceed the maximum rate allowed by Applicable Laws.

1.5 “**Architectural Committee**” means the committee which may be appointed by the Board pursuant to **ARTICLE 8**.

1.6 “**Architectural Guidelines**” means the design criteria adopted by the Board pursuant to **Section 8.5.1**.

1.7 “**Articles**” means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

1.8 “**Assessments**” means the assessments levied to cover the Common Expenses under **ARTICLE 5** or other assessments permitted to be levied by the Association under the Governing Documents, which include:

1.8.1 “**Capital Improvement Assessments**” means the Capital Improvement Assessments that are levied pursuant to **Section 5.6**.

1.8.2 **“Compliance Assessments”** means the Compliance Assessments that are levied pursuant to **Section 5.7**.

1.8.3 **“Cost Center Assessments”** means the Cost Center Assessments that are levied upon a Cost Center in accordance with **Section Error! Reference source not found.**

1.8.4 **“Regular Assessments”** means the Regular Assessments that are levied pursuant to **Section 5.4**.

1.8.5 **“Special Assessments”** means the Special Assessments that are levied by the Association pursuant to **Section 5.5**.

1.9 **“Assigned Bicycle Parking Spaces”** means the bicycle parking spaces assigned to certain Residential Owners pursuant to **Section 2.10**.

1.10 **“Assigned Parking Spaces”** means the parking spaces assigned to certain Residential Owners pursuant to **Section 2.11**.

1.11 **“Association”** means Elevant Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.12 **“Association Maintenance Areas”** means the Association Property and any other areas which are required to be maintained by the Association under the Governing Documents or to comply with Governmental Entitlements.

1.13 **“Association Maintenance Manual”** means the manual or guide which may be prepared by Declarant or its consultants and provided to the Association, specifying obligations for maintenance of the Association Property and other areas as to be maintained by the Association, as updated and amended from time to time.

1.14 **“Association Property”** means all real property owned from time to time in fee title or as an easement by the Association. The Association Property shall include the entire Community, excepting therefrom the Units and the Common Area. The Association Property shall extend indefinitely upwards and downward to the center of the earth, excepting therefrom areas that are Units or Common Area, and its lateral boundaries shall be as described on the Condominium Plan. Upon conveyance to the Association, which shall occur prior to or concurrently with the conveyance of the first Condominium to an Owner under a Public Report, the Association Property will consist of the real property identified as Association Property on **Exhibit “A”**.

1.15 **“Association Rules”** means the rules and regulations adopted by the Board from time to time.

1.16 **“Bicycle Parking Hoops”** means the bicycle parking fixtures for use by the Commercial Owners, their customers and the public that may be located on the sidewalk in front of the Condominium Building.

1.17 **“Bicycle Parking Spaces”** means the bicycle parking spaces located on the ground floor of the Condominium Building that may be assigned to certain Residential Owners pursuant to **Section 2.10**. The Bicycle Parking Spaces are depicted on **Exhibit “D”** attached hereto.

1.18 **“Board”** means the board of directors of the Association.

1.19 **“Budget”** means the budget for the Association, which sets forth the Common Expenses to be allocated among the Owners. The Budget consists of (a) a shared budget (“**Shared Budget**”) which sets forth the portion of the Common Expenses allocable to both the Residential Owners and the

Commercial Owners, and (b) a residential budget which sets forth the portion of the Common Expenses allocable only to the Residential Owners ("**Residential Budget**").

1.20 "**Bylaws**" means the bylaws of the Association as they may be amended from time to time, which are or shall be adopted by the Board.

1.21 "**Car Share Company**" means a company providing car share services, such as, Zipcar, City Car Share and Getaround, the services of which Declarant or the Association may procure for the benefit of the Owners.

1.22 "**City**" means the City of San Francisco, California.

1.23 "**Commercial Condominium**" means a condominium comprised of a Commercial Unit and an undivided interest in the Common Area and designated as a Commercial Unit on the Condominium Plan.

1.24 "**Commercial Owner**" refers individually or collectively, as the context requires, to the record owner, whether one or more Persons, including Declarant, of a Commercial Condominium, but excluding those having such interest merely as security for the performance of an obligation.

1.25 "**Commercial Unit**" means a Unit designated on the Condominium Plan as a Commercial Unit.

1.26 "**Common Area**" means the three-dimensional portion of airspace owned in equal undivided 1/57th interests by the Owners. The lateral and vertical boundaries of the Common Area are shown on the Condominium Plan.

1.27 "**Common Expenses**" means the actual and estimated costs and expenses incurred or to be incurred by the Association including without limitation the following:

1.27.1 expenses for performance of the Maintenance Obligations of the Association, and the management, operation of the Association Maintenance Areas under the Governing Documents;

1.27.2 expenses incurred in performing the duties and obligations of the Association set forth in the Governing Documents;

1.27.3 expenses of any services provided by the Association from time to time.

1.27.4 expenses incurred in complying with the Governmental Entitlements and Applicable Laws;

1.27.5 expenses incurred in administering any committee formed by the Association.

1.27.6 expenses incurred to cover due but unpaid Assessments;

1.27.7 expenses for management and administration of the Association, including, without limitation, compensation paid by the Association to managers, accountants, attorneys, architects and consultants;

1.27.8 expenses incurred in maintaining the legal status and qualifications of the Association as an entity in good standing and entitled to do business in the State of California;

1.27.9 expenses of any inspections required or deemed appropriate by the Association;

1.27.10 expenses, if any, for the maintenance of any areas required by an Governmental Agency to be maintained by the Association;

1.27.11 expenses of operating and maintaining any Utility Facilities, trash pickup and disposal, elevator, landscaping, and other services benefiting the Owners and their Units to the extent such services are paid for by the Association;

1.27.12 expenses of insurance and fidelity bonds maintained by the Association;

1.27.13 reasonable reserves as deemed appropriate by the Association or otherwise required to be maintained under the Governing Documents or Applicable Laws;

1.27.14 taxes and assessments incurred by the Association;

1.27.15 expenses of bonding of the members of the Board and any professional managing agent or any other person handling the funds of the Association; taxes and assessments paid by the Association; and

1.27.16 expenses incurred by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof.

1.28 “**Common Roof Deck**” means the deck area situated on the tenth (10th) level of the Condominium Building for use by all Residential Owners.

1.29 “**Community**” means all of the Property together with all Improvements situated thereon.

1.30 “**Community Handbook**” means the handbook which may be provided by Declarant to Owners containing Association Rules, Architectural Guidelines, Election Rules and other information regarding the Community.

1.31 “**Condominium**” means an estate as defined in California Civil Code Section 4125 consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit as described in this Declaration, the Condominium Plan and/or in the deed conveying the Condominium.

1.32 “**Condominium Building**” means the building in which the Condominiums are located as shown on the Condominium Plan.

1.33 “**Condominium Plan**” means the condominium plan for the Community recorded against the Property pursuant to California Civil Code Section 4285 *et seq.*, that encumbers the Property and each Supplementary Condominium Plan, if any, recorded pursuant to the provisions of this Declaration.

1.34 “**Cost Center**” means the portions of the Property which directly benefit some, but not all of the Owners. This Community shall include one Cost Center for Parking Spaces. Additional Assessments will be imposed on the Owners receiving the benefit of the Cost Center, in accordance with the separate Cost Center Budget for parking.

1.35 “**Cost Center Budget**” means the elements of the Association budget which itemize the cost components to be assessed against the Residential Condominiums within the Cost Center.

1.36 “**County**” means the County of San Francisco, California.

1.37 “**Cross Unit Drainage Facilities**” means those certain drainage facilities installed by Declarant to provide for drainage between certain Units.

1.38 **“Declarant”** means 555 GOLDEN GATE AVENUE, LLC, a California limited liability company and shall include those successors and assigns of Declarant who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant’s rights in an Assignment of Declarant’s Rights (**“Assignment of Declarant’s Rights”**) executed by Declarant, or a successor Declarant, and recorded in the Official Records assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. A successor Declarant shall also be deemed to include (whether or not an assignment of Declarant’s rights is executed or recorded) the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure power of sale or deed in lieu of such foreclosure or sale, and a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidation, sale of stocks or assets, operation of law or otherwise.

1.39 **“Declarant Party(ies)”** means Declarant and its current and future Affiliates, and the respective current and future directors, officers, employees, members, managers, partners, trustees, trust beneficiaries, agents, and representatives, of Declarant.

1.40 **“Declaration”** means this Declaration of Covenants, Conditions and Restrictions of Elevant, as it may from time to time be amended or supplemented.

1.41 **“DRE”** means the California Department of Real Estate and any successor agency.

1.42 **“Eligible Holder”** means any Mortgagee who has given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the Mortgage and requesting written notice of any or all of the events to which such Eligible Holder is entitled to notice specified in this Declaration. For so long as is required by FNMA’s legal requirements for project acceptance, all references to “Eligible Holder” herein shall be deemed to include all guarantors of First Mortgages. For so long as is required by FNMA’s legal requirements for project acceptance, all references to “Eligible Holder” herein shall be deemed to include all guarantors of Mortgages.

1.43 **“Emergency”** means any situation, condition or event, which threatens substantial imminent damage or injury to Persons or property.

1.44 **“Exclusive Use Area or Exclusive Use Easement”** means those portions of the Association Property over which exclusive easements are reserved and granted for the benefit of certain Owners in accordance with California Civil Code Section 4145, as described in this Declaration and shown on the Condominium Plan.

1.44.1 **“Exclusive Use Balcony Areas”** means those areas within the Association Property designated as “Exclusive Use Balcony Areas” on the Condominium Plan over which exclusive easements are reserved for the benefit of certain Owners for balcony purposes.

1.44.2 **“Exclusive Use Patio Areas”** means those areas within the Association Property designated as “Exclusive Use Patio Areas” on the Condominium Plan over which exclusive easements are reserved for the benefit of certain Commercial Owners for patio purposes.

1.44.3 **“Exclusive Use Roof Deck Areas”** means those areas within the Association Property designated as “Exclusive Use Roof Deck Areas” on the Condominium Plan over which exclusive easements are reserved for the benefit of certain Owners for roof deck purposes.

1.45 **“Federal Agencies”** refers collectively to one or more of the following agencies and the following letter designation for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation and any successors to such agencies: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal

National Mortgage Association) GNMA (Government National Mortgage Association), and VA (United States Department of Veterans' Affairs).

1.46 "**Final Map**" means the final subdivision or parcel map covering the Community and any corrections, modifications and/or lot line adjustments to such Final Map.

1.47 "**First Mortgage**" means a Mortgage that is first in priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

1.48 "**First Mortgagee**" means the Mortgagee of a First Mortgage.

1.49 "**First Purchaser**" means the Owner of a Condominium who acquired the Condominium from Declarant under authority of a Public Report.

1.50 "**Fiscal Year**" means the fiscal accounting and reporting period of the Association selected by the Board.

1.51 "**Fit and Finish Warranty**" means the one year limited warranty provided by Declarant for the fit and finish of certain components of the Residential Units.

1.52 "**Governing Documents**" means, collectively, this Declaration, the Articles, Bylaws, Architectural Guidelines, the Association Rules and Supplementary Declarations.

1.53 "**Governmental Agencies**" means the City, the County and any other federal, state, local or municipal governmental entity or quasi-governmental entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Property.

1.54 "**Governmental Entitlements**" means any entitlements, permits and authorizations relating to the Property and any conditions imposed in connection with such entitlements, permits and authorizations issued or imposed by any Governmental Agencies.

1.55 "**Hazardous Materials**" means any biologically or chemically active, or toxic or hazardous waste or materials as defined or regulated by Applicable Laws including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; any applicable state, local or federal laws, and the regulations adapted under these Acts.

1.56 "**Improvements**" means all structures, additions or improvements of every type or kind installed or erected on the Property or an alteration or modification to a Unit, Exclusive Use Area or Association Property or any addition to a Unit or Association Property, including, without limitation, room partitions, structural alterations to any portion of a Unit or any Association Property surrounding the Unit, any addition or alteration to a Unit that causes penetration beyond the unfinished surface of the walls, ceilings or surface flooring of a Unit or impacts or affects in any manner any Association Property; skylights; stairs; window tinting; plantings and potted plants; paving; Utility Facilities; poles; signs, and all other structures or improvements of every type and kind installed or erected on the Property.

1.57 "**Institutional Mortgagee**" means (a) a First Mortgagee that is a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under Applicable Law; (b) an insurer or governmental guarantor of a First Mortgage; (c) a First Mortgagee which is a Federal or State Agency; or (d) any other institution specified by the Board in a recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Condominium.

1.58 “**Invitee**” means any Person whose presence within the Community is approved by or is at the request of a particular Owner, including, without limitation, Occupants, agents, contractors and the family, guests, employees or licensees of Owners or Lessees.

1.59 “**Lease**” means each lease, license or other agreement whereby a Person acquires rights to use or occupy any portion of a Condominium for a specified term.

1.60 “**Lessee**” means a lessee or tenant under a Lease occupying a Unit.

1.61 “**Maintenance**” or “**Maintain**” whether capitalized or not means maintain, repair and replace unless otherwise specified in this Declaration.

1.62 “**Maintenance Obligations**” means the Association’s obligations and each Owner’s obligations to perform (a) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively, (b) any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to the Association or the Owners by Declarant or any manufacturer, as applicable; (c) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property and Units, as applicable; and (d) any maintenance obligations imposed by the Governing Documents or any Governmental Agency.

1.63 “**Maintenance Responsibility Chart**” means **Exhibit “B”** attached hereto and incorporated herein which designates the components of the Community to be maintained by the Association and the Owners, respectively. The Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration.

1.64 “**Majority**” means more than fifty percent (50%).

1.65 “**Member**” means every Person who holds a membership in the Association.

1.66 “**Mortgage**” means a recorded mortgage or deed of trust encumbering a Condominium.

1.67 “**Mortgagee**” means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.68 “**Notice and Hearing**” means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

1.69 “**Notice of Delinquent Assessments**” has the meaning set forth in **Section 5.14.4**.

1.70 “**Occupant**” means each Owner, Lessee and any other Person that is entitled to occupy from time to time all or a portion of a Unit, whether as Owner or pursuant to ownership, lease, sublease, license or other similar agreement.

1.71 “**Official Records**” means the official public records of the County Recorder.

1.72 “**Operating Rules**” means those Association Rules that constitute an operating rule under California Civil Code Section 4340 *et seq.*

1.73 “**Owner**” means the record owner, whether one (1) or more Persons, including Declarant, of any Condominium excluding those having such interest merely as security for the performance of an obligation.

1.74 **“Owner Maintenance Manual”** means the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Condominiums by the Owners, as updated and amended from time to time.

1.75 **“Parking Garage”** means the portions of the Condominium Building that consists of parking areas, vehicle circulation lanes or aisles and vehicle ingress and egress points to adjacent streets.

1.76 **“Parking Spaces”** means those areas within the Parking Garage, designated for parking purposes. The Parking Spaces are depicted on **Exhibit “E”** attached hereto.

1.77 **“Permittees”** means all Occupants and their respective officers, directors, employees, agents, partners, contractors, customers, guests, visitors, invitees, licensees and concessionaries.

1.78 **“Person”** means a natural person, a corporation, a partnership, a limited liability company, a trust, a trustee, or other legal entity recognized under California law. When the word “person” is not capitalized, the word refers only to natural persons.

1.79 **“Plans and Specifications”** shall have the meaning set forth in **Section 8.3**.

1.80 **“Property”** means all the real property described in **Exhibit “A”**.

1.81 **“Public Report”** means the Final Subdivision Public Report issued by the DRE.

1.82 **“Residential Condominium”** means a condominium comprised of a Residential Unit and an undivided interest in the Common Area.

1.83 **“Residential Facilities”** means all of the facilities for the use and enjoyment of the Residential Owners and their Invitees, situated within the Association Property, including, without limitation, the Common Roof Deck, the Parking Garage and residential lobby.

1.84 **“Residential Owner(s)”** means individually or collectively, as the context requires, the Owner(s), whether one or more Person(s), including Declarant, of the Residential Condominiums.

1.85 **“Residential Unit”** means the separate interest in a Unit designated on the Condominium Plan as a Residential Unit.

1.86 **“Storm Water Agreement”** means that certain Permanent Post-Construction Stormwater Controls Maintenance Agreement recorded on September 10, 2019 as Instrument No. 2019-K829566, in the Official Records, and any amendments or supplements recorded against the Property that may be identified in a Supplementary Declaration.

1.87 **“Storm Water Planter Area(s)”** means those portions of Association Property that contain landscaping and equipment on the second (2nd) floor, tenth (10th) floor, and roof of the Condominium Building, all as shown on the Condominium Plan, required for Storm Water maintenance.

1.88 **“Supplementary Condominium Plan”** means (a) any Condominium Plan which supplements a previously recorded Condominium Plan and/or which is subsequently recorded to designate the boundaries of any Exclusive Use Areas. A Supplementary Condominium Plan shall also include, (b) a Condominium Plan which is recorded by Declarant to correct errors in the originally recorded Condominium Plan, or (c) a Condominium Plan which is recorded by Declarant after the completion of the initial construction of the Community to show the actual “as-built” locations or dimensions of any component of the Community, which Supplementary Condominium Plan shall not require the consent of the Owners, their Mortgagees or the Association.

1.89 **“Supplementary Declaration”** means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property and thereafter by the Association do any or all of the following: (a) identify areas referenced in this Declaration to be maintained by the Association and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner; (b) conform this Declaration or any previously recorded Supplementary Declarations to Applicable Laws or any conditions of approval imposed by any Governmental Agency or Governmental Entitlements; (c) conform the Governing Documents to the requirements of any Federal Agencies and, notwithstanding anything to the contrary set forth in this Declaration, impose obligations or covenants if required by Federal Agencies without the consent of any Owner; (d) supplement or modify any of the exhibits to this Declaration or any previously recorded Supplementary Declarations; (e) make corrections to the provisions of this Declaration or any previously recorded Supplementary Declaration(s); and/or (f) for any of the other purposes for which a Supplementary Declaration may be recorded under this Declaration.

1.90 **“Unit”** means the elements of a Condominium which are not owned in common with the other Owners, such Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The elements of a Condominium that are owned separately consist of a separate interest in space, the boundaries of which are described as the area designated as “Unit” in the Condominium Plan. There are two types of Units consisting of Residential Units and the Commercial Units. The Unit includes all Improvements situated within its boundaries, and includes, without limitation, (a) interior walls (except interior bearing walls), (b) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (c) any door or window including any sliding glass doors, (d) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (e) the openings and outlets of all Utility Facilities that are located partially within the Unit and partially in the Association Property, such as electrical outlets, and that exclusively serve the Unit, and (f) all Utility Facilities serving solely that Unit, whether located in the Unit or the Association Property. The following are not part of any Unit: bearing walls, columns, floors, roofs and foundations, and Utility Facilities that serve two or more Condominiums wherever located. Areas within a dropped ceiling that contain Utility Facilities that serve two or more Condominiums are Association Property and not part of the Unit. In interpreting deeds and plans, the then existing physical boundaries of the Unit, whether in its original state or reconstructed in substantial conformance with the original plans, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan, the deed or any other recorded document, regardless of settling or lateral movements and regardless of minor variances between boundaries shown on the Condominium Plan or any other recorded document and those of the Condominium Building.

1.91 **“Utility Facilities”** means all utility facilities serving the Community including, without limitation, intake and exhaust systems, backflow preventers, storm and sanitary sewer systems, drainage systems and pollution control devices, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Community.

1.92 **“Voting Power”** means the voting power of the Association set forth in **Section 4.2**.

ARTICLE 2 OWNERSHIP AND EASEMENTS

2.1 **Ownership of Condominium.** Ownership of each Condominium within the Community includes (a) fee title to a Unit, (b) an undivided interest in the Common Area, as shown on the Condominium Plan and the deed to the Condominium, (c) a membership in the Association, and (d) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement or

easements appurtenant to such Condominium over the Association Property as described in this Declaration, the Condominium Plan, and the deed to the Condominium.

2.2 Title to Association Property. Any property that is intended or required to be Association Property shall be conveyed to the Association prior to the conveyance of the first Condominium to a First Purchaser.

2.3 No Separate Conveyance. The interest of each Owner in the use and benefit of the Association Property shall be appurtenant to each Condominium. No Condominium shall be conveyed separately from the interest in the Common Area or the right to use the portions of the Association Property which are open for access by the Owners and their Invitees in accordance with the Governing Documents. Any conveyance of any Condominium shall automatically transfer the interest in the Common Area and the Owner's right to use the Association Property without the necessity of express reference in the instrument of conveyance.

2.4 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Association Property may delegate such rights to the Occupants of the Owner's Condominium, subject to reasonable regulation by the Association and subject to the Governing Documents. An Owner who has made such a delegation of rights shall not be entitled to use of the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

2.5 Limitations. All of the easements and licenses described in this **ARTICLE 2** are subject to the limitations set forth in **Sections 2.18** and **2.19** and any other limitations and restrictions set forth in the Governing Documents.

2.6 Below Market Rate Units. Residential Units 202 (two (2) bedroom), 206 (two (2) bedroom), 305 (two (2) bedroom), 403 (one (1) bedroom), 502 (two (2) bedroom), 601 (two (2) bedroom) and 704 (one (1) bedroom) are subject to the Residential Inclusionary Affordable Housing Program and the requirements of the Affordable Housing Monitoring Procedures Manual of the San Francisco Planning Department in accordance with the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on December 7, 2018 as Instrument No. 2018K701960, the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on July 19, 2018 as Instrument No. 2018K641355, the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on August 27, 2018 as Instrument No. 2018K661893, and the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on March 26, 2019 as Instrument No. 2019-K747844.

2.7 Commencement of Easements. All of the easements set forth in this **ARTICLE 2** shall commence upon recordation of this Declaration and the conveyance by Declarant of a Condominium to a First Purchaser and shall thereafter be deemed to be covenants running with the Property for the use and benefit of the Association, Declarant, the Owners and the Condominiums.

2.8 Easements and Rights of Use in Favor of Residential Owners.

2.8.1 Non-Exclusive Easements for Use of Association Property. Declarant hereby reserves and grants for each Residential Owner for the benefit of such Owner and such Owner's Invitees, non-exclusive easements for ingress, egress, use and enjoyment on, over, through and across the portions of the Association Property and other areas intended for the use and benefit of the Owners and an Owner's Invitees (except areas where access is restricted by the Association) as specified in the Governing Documents. Easements over the Association Property shall be subject to the Assigned Parking Spaces and Assigned Bicycle Parking Spaces.

2.8.2 Easement for HVAC Equipment. Declarant hereby reserves and grants to each Owner for the benefit of such Owner and such Owner's Invitees and Lessees, an easement over the

rooftop and mezzanine level of the Condominium Building, only as necessary for maintenance of HVAC equipment. Such HVAC maintenance must be performed by a duly licensed and insured service provider approved by the Association.

2.8.3 Easement for Telecommunications Equipment. Declarant hereby reserves and grants to each Owner for the benefit of such Owner and such Owner's Invitees and Lessees, an easement over and through the MPOE Room, as necessary for maintenance of telecommunications, cable and Internet equipment. Such maintenance must be performed by a duly licensed and insured service provider approved by the Association.

2.8.4 Exclusive Use Easements. Declarant hereby reserves and grants to each Owner an exclusive easement to use each portion of the Association Property (if any) that is described in the Condominium Plan or the deed to the Owner's Residential Unit as being an Exclusive Use Area appurtenant to such Residential Unit for the purposes described in this Declaration or the deed.

2.9 Easement in Favor of Commercial Owners.

2.9.1 Non-Exclusive Easements over Association Property. Declarant hereby reserves and grants for the benefit of the Commercial Owners a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over only those portions of the Association Property including the lobby, Parking Garage and mezzanine level as may be reasonably necessary for (a) construction, maintenance, repair and replacement of the Commercial Unit or Utility Facilities, including the HVAC equipment and bathroom fans, servicing such Commercial Unit as set forth herein and (b) emergency ingress and egress.

2.9.2 Non-Exclusive Easement for Commercial Owners Over Other Commercial Units. Declarant hereby grants to each Commercial Owner a non-exclusive easement over that portion of each other Commercial Unit as is necessary to maintain, repair, replace any utility servicing such Commercial Unit. The Commercial Owner of the Unit serviced by a utility shall be responsible to maintain, repair and replace such utility. If the exercise of such easement requires entry upon another Commercial Unit, such entry shall be subject to forty-eight (48) hours' written notice to the Owner of the Commercial Unit upon which entry is required, except in the case of an emergency, in which case, no notice shall be required. The Commercial Owners shall reasonably cooperate to ensure that maintenance and repair is done at such a time and manner as to minimize disruption to the business being conducted. If a utility services more than one Commercial Unit, the Owners of all Commercial Units sharing such utility shall share in the cost of repair or maintenance of such utility on a pro rata basis.

2.9.3 Signage. Each Commercial Owner shall have a non-exclusive easement over the Condominium Building exterior for signage in compliance with the Architectural Guidelines and any additional criteria which may be specified in the Association Rules.

2.9.4 Telecommunications. Each Commercial Owner shall have for its benefit and the benefit of its Occupants, easements reasonably necessary to access the roof of the Condominium Building for placement, maintenance, repair and replacement of satellite and microwave dishes, antenna and laser heads, and other telecommunication devices, together with associated equipment and cable, by licensed contractors reasonably approved by the Association, at a location reasonably designated by Declarant or the Association. Such access shall be provided to each Commercial Owner upon reasonable notice to the Association property manager and subject to the Association's approval of any such satellite and microwave dishes, antenna and laser heads, telecommunication devices, equipment and cable.

2.9.5 Utilities. Declarant reserves for its benefit and the benefit of its agents, employees and contractors and grants to each Commercial Owner, reciprocal, non-exclusive easements over, under, across and through the Association Property, which are reasonably necessary for the maintenance, repair and replacement of the Utility Facilities serving such Unit. The Association shall have the right to impose reasonable restrictions on such right of entry, including, without limitation

(a) requiring only licensed, approved contractors to have access to such area and (b) imposing limitations on the hours when access shall be granted (except in the case of Emergencies, in which case such limitations shall not apply.)

2.10 Bicycle Parking Spaces.

2.10.1 Assignment of Bicycle Parking Spaces. An Assigned Bicycle Parking Space may be assigned to a Residential Owner for use in accordance with the terms of the Governing Documents. No Commercial Owner shall have any bicycle parking rights within the Community. The rights assigned to a Residential Owner to use an Assigned Bicycle Parking Space shall be subject to the rights of Declarant or the Association to temporarily relocate such Assigned Bicycle Parking Space, upon reasonable notice, in order to accommodate any construction, maintenance or repairs of Improvements within the Community. In such case, Declarant or the Association shall have the right to exchange the affected Assigned Bicycle Parking Space for another available Bicycle Parking Space, if any. Each Residential Owner hereby acknowledges that such activities of Declarant or the Association may impair the use of such Residential Owner's Assigned Bicycle Parking Space(s) and may constitute an inconvenience or nuisance, and hereby releases Declarant and the Association from any claims with respect to such matters. Bicycle Parking Hoops may also be located in front of the Condominium Building. The Bicycle Parking Hoops may be installed and/or removed at the discretion of the City.

2.10.2 Owners' Rights to Bicycle Parking Spaces. Upon assignment of an Assigned Bicycle Parking Space to a Residential Owner as provided in **Section 2.10.1**, such Residential Owner shall have the exclusive right to the use of the Assigned Bicycle Parking Space, subject to the rights of Declarant and the Association set forth in **Section 2.10.1**. The Association shall not have the right to change the location of such Assigned Bicycle Parking Space, except as provided in **Section 2.10.1**. Upon conveyance of a Condominium by a Residential Owner to another Residential Owner, the bicycle parking rights assigned to such Residential Owner in the records of the Association shall automatically inure to the benefit of the new Residential Owner.

2.10.3 Relocation Based Upon Agreement of Owners. If a Residential Owner desires to exchange or lease the right to use its Assigned Bicycle Parking Space with another Residential Owner and both affected Residential Owners voluntarily agree to the exchange or lease and provided the two Residential Owners sign an agreement in a form prepared by the Association agreeing to the exchange or lease, the Association may then change its records to reflect the exchange or lease requested by the two Owners. The Association shall retain in its records the written agreement of the two Residential Owners. Upon the change to the records of the Association, the new Assigned Bicycle Parking Space(s) shall inure to the benefit of the future Owners of such Residential Condominiums.

2.11 Parking.

2.11.1 Assignment of Parking Spaces. One (1) or more Parking Spaces may be assigned to a Residential Owner for use in accordance with the parking requirements of the Affordable Housing Monitoring Procedures Manual of the San Francisco Planning Department, the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on December 7, 2018 as Instrument No. 2018K701960, the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on July 19, 2018 as Instrument No. 2018K641355, the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on August 27, 2018 as Instrument No. 2018K661893, and the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on March 26, 2019 as Instrument No. 2019-K747844 (collectively, "**City Requirements**") and in accordance with the terms of the Governing Documents. In the event that a Residential Owner has been assigned more than one Parking Space, and no Parking Spaces are available to meet the City Requirements with respect to the initial allocation of parking, such Residential Owner shall be required to offer to sell or lease such Parking Space(s) in excess of one (1), to the new Buyer in compliance with the City Requirements. The Commercial Owners shall not have any parking rights within the Community. The rights assigned to a Residential Owner to use or occupy an Assigned Parking Space shall be subject to the rights of Declarant or the Association to temporarily relocate such Parking Space, upon reasonable

notice, in order to accommodate any construction, maintenance or repairs of Improvements within the Community. In such case, Declarant or the Association shall have the right to exchange the affected Parking Space for another available Parking Space, if any. Each Residential Owner hereby acknowledges that such activities of Declarant or the Association may impair the use of such Owner's Assigned Parking Space(s) and may constitute an inconvenience or nuisance, and hereby releases Declarant and the Association from any claims with respect to such matters.

2.11.2 Parking Spaces With Individual Electric Car Chargers. Declarant has installed the main electrical meter required for the installation of electric car chargers in the Parking Garage. Upon assignment of an Assigned Parking Space to a Residential Owner as provided in **Sections 2.11.1**, such Residential Owner may have the right to install an electric car charger subject to: (a) the restrictions set forth in this **Section 2.11.2** and (b) the maximum electrical load available for electric car chargers. The right to install an electric car charger may also be subject to the location of the Residential Owner's Assigned Parking Space. The ability to install an electric car charger shall be granted on a first-come first-served basis until maximum electrical load has been reached. There is no guarantee that all Residential Owners with an Assigned Parking Space will have the ability to install an electric car charger. The Residential Owner shall be responsible for all costs and expenses of the electric car charger, the electrical submetering equipment and any other costs and expenses incurred in connection with the installation of the electric car charger. Such Residential Owner must meet all applicable health and safety standards and requirements imposed by state and local authorities, as well as other applicable zoning land use or other ordinances or land use permits. In addition, the Residential Owner must obtain approval from the Association and agree in writing to: (a) comply with the Architectural Guidelines; (b) use the contractor designated by Declarant or the Association to install the electric car charger and electrical submetering equipment; (c) within fourteen (14) days of approval by the Association, provide a certificate of insurance that names the Association as an additional insured under the Residential Owner's homeowner's insurance policy; and (d) pay for electricity usage associated with the electric car charger. The Residential Owner and each successive Owner of the electric car charger shall be responsible for the following: (i) damage to the electric car charger, adjacent Parking Spaces or any other Association Property resulting from the installation, maintenance, repair, removal or replacement of the electric car charger; (ii) maintenance, removal, repair and replacement of the electric car charger, as well as the restoration of the Association Property after removal; (iii) disclosing to prospective buyers the existence of the electric car charger and the related responsibilities; and (iv) maintain a homeowner liability policy with limits of liability of at least One Million Dollars (\$1,000,000) and shall name the Association as a named additional insured under the policy.

2.11.3 Owners' Rights to Assigned Parking Spaces. Upon assignment of an Assigned Parking Space to a Residential Owner as provided in **Sections 2.11.1**, such Residential Owner shall have the exclusive right to the use of the Parking Space so assigned, subject to the rights of Declarant and the Association set forth in **Sections 2.11.1, 2.11.2, 2.11.5** and **2.11.6**. The Association shall not have the right to change the location of such Assigned Parking Space, except as provided below for the Accessible Parking Spaces. Upon conveyance of a Residential Condominium by a Residential Owner to another Residential Owner, the parking rights assigned to such Residential Owner in the records of the Association shall automatically inure to the benefit of the new Residential Owner.

2.11.4 Relocation Based Upon Agreement of Owners. If a Residential Owner desires to sell, exchange or lease the rights to use its Assigned Parking Space to or with another Residential Owner, if such sale, exchange or lease is in compliance with Applicable Laws and both affected Residential Owners voluntarily agree to the sale, exchange or lease, and provided the two Residential Owners sign an agreement in a form prepared by the Association agreeing to the sale, exchange or lease, the Association may then change its records to reflect the sale, exchange or lease requested. In addition, subject to obtaining the prior written consent of the Board, a Residential Owner may lease the rights to use its Assigned Parking Space to a Commercial Owner, if such lease is in compliance with Applicable Laws and both the affected Residential and Commercial Owner voluntarily agree to the lease, and provided the two Owners sign an agreement in a form prepared by the Association agreeing to the lease, the Association may then change its records to reflect the lease requested. The Association shall have the right to revoke a lease for an Assigned Parking Space

between a Residential Owner and a Commercial Owner at any time. The Association shall retain in its records the written agreement of the two Owners. Upon the change to the records of the Association, then the new Assigned Parking Space(s) shall inure to the benefit of the future Residential Owners of such Condominiums. The Association shall not have the right to change the location of such Assigned Parking Space, except as provided above below with respect to an Accessible Parking Space.

2.11.5 Accessible Parking Space. A Parking Space may be designated for use by a person with disability status ("**Accessible Parking Space**"). Such Accessible Parking Space may be assigned by Declarant to the Owner of a particular Condominium upon the initial sale of such Condominium. Declarant shall, upon assigning the Accessible Parking Space to an Owner, designate such assignment in the records of the Association. An Owner who is assigned the Accessible Parking Space shall be subject to the rights of the Association to re-assign such Accessible Parking Space as provided herein. If the Accessible Parking Space remains unassigned after the sale of all the Condominiums in the Community, the Association shall have the right to assign and manage such space. Evidence of disabled status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles. The Association shall have the authority and be responsible for coordinating the assignment and exchange of Parking Spaces pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or Occupant become disabled and wish to use the Accessible Parking Space, forms and methods of notice to be given to the Association and Owner, and procedures for review of the required evidence of disabled status. The Association shall maintain appropriate records of such assignment and exchanges, including a copy of the evidence provided. Any reassignment of the Accessible Parking Space pursuant to this Section shall not constitute a severance from an Owner's Unit as set forth in **Section 12.5**. In no event shall Declarant or the Association be held liable if Declarant or the Association is unable to assign an Accessible Parking Space to an Owner with disability status because the designated Accessible Parking Space has previously been assigned to another Owner with disability status.

2.11.6 Car Share Parking Space. A Parking Space may be designated for use by a Car Share Company ("**Car Share Parking Space**") for car share services for the benefit of the Residential Owners. Declarant or the Association shall, upon assigning the Car Share Parking Space to a Car Share Company, designate such assignment in the records of the Association. No Owner may park in the Car Share Parking Space. The rights assigned to a Car Share Company to use or occupy the Car Share Parking Space shall be subject to the rights of Declarant or the Association to temporarily relocate such Car Share Parking Space or temporarily suspend car share services, upon reasonable notice, in order to accommodate any construction, maintenance or repairs of Improvements within the Community. In such case, Declarant or the Association shall have the right to exchange the Car Share Parking Space for another available Parking Space, if any. The Declarant does not guarantee that a Car Share Parking Space will be designated or available for use by the Residential Owners. If Declarant and/or the Association is unable to procure the services of a Car Share Company to service the Community, Declarant and/or the Association shall have the right to assign the Car Share Parking Space to a Residential Owner with the consent and approval of the City.

2.12 Easements in Favor of the Association and the Owners.

2.12.1 Encroachment. Declarant hereby reserves to itself and grants to the Owners for their benefit and the benefit of their Occupants and their respective Condominiums and to the Association for its benefit and the benefit of the Association Property, non-exclusive easements over, under, across and through the Units, and the Association Property for encroachment, support, maintenance, repair, occupancy and use of such portions of the Units and/or Association Property as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other Improvements or any portion thereof, or any other cause. In the event any portion of the Community is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching Improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct

of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.12.2 Structural Support. Declarant hereby reserves and grants for the benefit of the Owners and Occupants and their respective Condominiums, and for the benefit of the Association Property, non-exclusive easements and rights in and to all supporting components within and upon the Condominium Building and other portions of the Community, for structural support of the Improvements situated therein. Such non-exclusive easements shall not be deemed to create any rights in Owners to attach Improvements to the exterior of the Condominium Building.

2.12.3 Utilities. Declarant hereby reserves and grants to the Owners, for their benefit and the benefit of their Occupants and their respective Condominiums, and to the Association, for its benefit and the benefit of the Association Property, reciprocal non-exclusive easements over, under, across and through the Community for the maintenance, repair and replacement of the Utility Facilities which such Owner or the Association is obligated to maintain pursuant to this Declaration.

2.13 Easements for Drainage and Runoff. Declarant hereby reserves and grants to the Owners for their benefit and such Owner's Occupants and to the Association an easement for drainage through the established drainage pipes and facilities and Cross Unit Drainage Facilities.

2.14 Easements in Favor of the Association.

2.14.1 General Grant of Easement. Declarant hereby reserves and grants to the Association and the Association's agents, contractors and employees an easement to enter the Units as set forth in **Section 3.3.5**. In the case of any such entry over, upon, across and through any Property that is not owned by the Association, the Association shall endeavor to provide reasonable prior notice to the Owner of the affected portions of the Property. Such rights of entry shall be exercised in accordance with the provisions of **Section 3.3.5**.

2.14.2 Communications Facility. Declarant hereby reserves for its benefit and the benefit of any Declarant Parties and each of their agents, employees, contractors and grants to the Association on a non-exclusive basis, the right to install, maintain, repair and replace a satellite or other communications device on the roof of the Condominium Building, provided that such installation shall be in conformance with all Applicable Laws.

2.15 Easement in Favor of Car Share Company. Declarant hereby reserves for the benefit of the Owners a non-exclusive easement over the entrance to the Condominium Building from Redwood Alley and the Parking Garage, including the Car Share Parking Space, for a Car Share Company for the purposes of car share services and ingress and egress from Redwood Alley. Until the date that Declarant no longer owns any Unit within the Community, Declarant shall exclusively have the right to grant such easement to a Car Share Company. When Declarant no longer owns any Unit within the Community, the Association shall have the right to grant such easement to a Car Share Company.

2.16 Easements and Rights in Favor of Declarant.

2.16.1 Declarant's Easements to Exercise Declarant's Rights. Declarant hereby reserves to itself, with the right and power to grant and transfer the same for itself, a non-exclusive easement to perform its duties and exercise its rights, powers and obligations under this Declaration, including, without limitation, the rights described in this **Section** and the rights and powers and obligations described in **ARTICLE 9**.

2.16.2 Maintenance and Repair. Declarant hereby reserves to itself for its benefit, together with the right and power to grant and transfer the same, a non-exclusive easement over, upon, through and across the Property for access to perform necessary maintenance of any Improvements constructed by Declarant or its respective agents, employees and contractors. Such right includes the

right of Declarant to enter upon the Property to perform any work required to be performed pursuant to any of the Governmental Entitlements, or to cure any failure of the Association to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee and to perform its obligations under any warranties provided by Declarant to an Owner and/or to exercise any repair rights granted to Declarant under this Declaration any warranties or Applicable Laws; provided, however, that nothing contained herein shall be deemed to impose any obligation on Declarant to cure any failure of the Association to perform its Maintenance Obligations.

2.16.3 Installation of Additional Improvements. Declarant hereby reserves to itself for its benefit, together with the right and power to grant and transfer the same and the right to install and operate within the Association Property such landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, Utility Facilities, and other facilities and Improvements, as may be deemed appropriate by Declarant and/or required by the Governmental Entitlements or in connection with the issuance of any permits or approvals for the benefit of Declarant. In addition, Declarant hereby reserves to itself a non-exclusive easement over, upon and across all Association Property for purposes of such access as may be reasonably required in connection with such activities.

2.16.4 Utility Facilities. Declarant hereby reserves to itself for its benefit, together with the right and power to grant and transfer the same, easements on, over, under, through and across the Property for the purpose of constructing, erecting, operating and maintaining facilities and improvements, including, without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, as may be shown on any recorded subdivision or Final Map or as are required by any Governmental Agencies or as may be required in connection with the development of the Property.

2.16.5 Construction and Marketing Easements. Declarant hereby reserves to itself, together with the right to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over and across, any portions of the Property as is reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and Declarant's easements include, without limitation, an easement for marketing Condominiums in the Community and condominiums located in any other communities being marketed and sold by Declarant.

2.16.6 Easements for Signage. Declarant hereby reserves to itself, together with the right to grant and transfer the same, easements on, over, under, through and across the Association Property to install, maintain, repair and replace, identification, promotional, and other signage, banners, flags, and other promotional advertising materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of the activities described in **Section 2.16.5 and ARTICLE 9.**

2.16.7 Bicycle Parking Space Rights. Until the later of two years after the first close of escrow for a Residential Condominium pursuant to a Public Report or until Declarant no longer owns any portion of the Property, Declarant shall have the sole right to assign to Residential Owners an exclusive right to use a Bicycle Parking Space. Declarant shall, upon assigning a Bicycle Parking Space to a Residential Owner designate such assignment in the records of the Association. If any Bicycle Parking Spaces remain unassigned after Declarant no longer owns any portion of the Property, the Association shall have the right to assign any such Bicycle Parking Space to Residential Owners.

2.16.8 Parking Rights. Until the later of two years after the first close of escrow for a Residential Condominium pursuant to a Public Report or until Declarant no longer owns any portion of the Property, Declarant shall have the sole right to assign to Residential Owners an exclusive right to use a Parking Space, provided however, such assignment of parking must comply with the City Requirements. Declarant shall, upon assigning a Parking Space to a Residential Owner designate such assignment in the records of the Association. If any Parking Spaces remain unassigned after Declarant no longer owns any portion of the Property, the Association shall have the right to assign any such Parking Spaces to Owners.

2.17 Enforcement Easement in Favor of Declarant and/or the Association.

2.17.1 Enforcement Easement. Declarant hereby reserves to itself and grants to the Association for its benefit and the benefit of its respective agents, employees and contractors, a non-exclusive easement and right of access over, upon, across and through all portions of the Property, for the purpose of taking such action as may be reasonably required to exercise the remedies of Declarant or the Association (as applicable) in regard to any violation of the Governing Documents for performing its duties, obligations and exercising its powers described in the Governing Documents including, without limitation, Maintenance Obligations. In the case of any such entry over, upon, across and through any portion of the Property that is not owned by the Association, (a) Declarant or the Association shall endeavor to provide reasonable prior notice to the Owner, except in the case of Emergency where no such notice shall be required, and (b) Declarant or the Association shall use commercially reasonable efforts to minimize any inconvenience to the Owners and/or Occupants.

2.17.2 Other Easements. Nothing in this Declaration shall be deemed to limit the right of Declarant or the Association (with the prior consent of Declarant), to grant or reserve any additional easements over any portion of the Property to such grantees and for such purposes as Declarant or the Association (as applicable) may deem appropriate, provided that any such easement shall not be inconsistent with the easement rights granted in this Declaration.

2.18 Limitations on Easements over the Association Property. Notwithstanding anything in this Article, except for Declarant, no Owner shall have the right of access to any rooftop areas (other than expressly permitted herein), any mechanical or operating areas or any other areas within the Condominium Building to which access has been restricted by the Governing Documents or the Association.

2.19 Limitations on Easements and License Rights. The easement rights, and the reservations of the right and authority to grant easements, described in this Declaration, shall be subject to the limitations set forth below.

2.19.1 Easements of Record. The Property and all of the easements granted or reserved herein are subject to all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way as shown on any Final Map and any other matters of record, including, without limitation, the Governmental Entitlements and any agreements recorded by Declarant to memorialize the easements and other rights reserved to Declarant.

2.19.2 Governing Documents. All of the easements and other rights granted herein are subject to the limitations, restrictions and easements set forth in the Governing Documents. Without limiting the foregoing, all of such easements and rights shall be subject to the easements and other rights reserved to Declarant and granted to the Owners, the Association and their Invitees, as specified above.

2.19.3 Restricted Access. Subject to the Governing Documents and the rights specifically reserved by Declarant, the Association shall have the right to (a) limit or permit usage of the Association Property by Persons as the Association deems appropriate, (b) limit the number of Persons using the Association Property, and/or (c) permit members of the public to use portions of the Association Property. The Association and Declarant shall have the right to temporarily close or restrict access to the Association Property as may be reasonably necessary in connection with the exercise of any Maintenance Obligations or in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Association hereunder.

2.19.4 Suspend Right to Use Association Property. All of the easements are subject to the right of the Association, after Notice and Hearing, to temporarily suspend a Residential Owner's rights as a Member to use the Residential Facilities and/or to use its Assigned Parking Spaces, Assigned Bicycle Parking Spaces for a period not to exceed sixty (60) days unless such rights are suspended for failure to pay Assessments pursuant to the terms of the Governing Documents. Notwithstanding anything to the contrary contained herein, in no event shall the Association suspend an Owner's easement of right

of ingress and egress to and from such Owner's Residential Unit or such Owner's easements for utilities serving such Owner's Residential Unit.

2.19.5 Easements and Dedication. The Association shall have the right to dedicate, transfer, or grant easements over all or any part of the Association Property or any interest therein to the City or other Person, which dedication, transfer or easements shall be subject to the provisions of this Declaration and such other conditions as the Association deems proper.

2.19.6 Control Bicycle Parking. Subject to the provisions of this Declaration and the rights of Declarant hereunder, the Association shall have the right to control use of the Bicycle Parking Spaces and to promulgate rules and regulations to control use of the Bicycle Parking Spaces.

2.19.7 Control Parking. Subject to the provisions of this Declaration and the rights of Declarant hereunder, the Association shall have the right to control parking within the Community and to promulgate rules and regulations to control use of the Parking Spaces.

2.19.8 Limit Guests. The Association shall have the right (i) to limit, on a reasonable basis, the number of guests and tenants of the Owners using the Common Roof Deck, (ii) to charge reasonable fees for special or extraordinary use of the Common Roof Deck, and/or (iii) to allow all or part of the Common Roof Deck to be reserved for special events.

2.19.9 Duration of Easement Rights. Except for the rights of Declarant, which expire as provided in **ARTICLE 9**, the easement rights granted under this Declaration shall be for a term and duration coextensive with the Owner's title or interest in and to a Unit. Upon conveyance of a Condominium, such rights shall pass to the successor Owner(s) of the Condominium being conveyed.

2.19.10 Rights of Invitees Nothing contained in this Article is intended to grant any third party beneficiary rights or any other rights to an Invitee. No Invitee shall have any rights under this Article independent of the rights granted to an Owner.

2.19.11 No Separate Transfer. None of the easements described above shall be conveyed, transferred, assigned, or encumbered separately from the fee interests in the individual Condominiums. Easements that benefit or burden any Condominium shall be appurtenant to that Condominium and shall automatically accompany the transfer or conveyance of such Condominium, even though the description in the instrument of transfer may refer only to the interests in the Condominium as transferred or conveyed.

2.20 Light, Air and View. No Owner shall have an easement for light, air or view over the Condominium of another Owner and no diminution of light, air or view by any Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view.

2.21 Creation of Designated Exclusive Use Area Walls or Floors. Declarant and, subject to the provisions of **ARTICLE 8** of this Declaration, all Applicable Laws, and the approval of the applicable Governmental Agencies, the Association, shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Units, without amending this Declaration or the Condominium Plan, an exclusive use easement on and through any demising wall(s) or floors separating two (2) or more Units and the right to alter, modify or remove such demising walls or floors subject to the approval of the applicable Governmental Agencies, consent of Declarant and conformance with the requirements of the Board, pursuant to the provisions of **ARTICLE 8**. If an Owner receives the required approvals hereunder and combines two (2) or more adjacent Units, such Units shall be treated as separate Units for all purposes hereunder, including separate assessments for each individual Unit. So long as Declarant owns any portion of the Property, or two (2) years after the conveyance of a Residential Unit pursuant to a Public Report, whichever is earlier, this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect.

**ARTICLE 3
THE ASSOCIATION**

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

3.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Governing Documents. Except as otherwise provided in Governing Documents, all matters requiring the approval of Members shall be deemed approved if (a) Members holding a Majority of the total Voting Power consent to them in writing as provided in the Bylaws, (b) such matters are approved by a Majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws, or (c) in certain situations set forth in **Section 3.4.11**, such matters as are approved in accordance with the procedures set forth in **Section 3.4.11**.

3.3 Powers of the Association. Subject to the limitations expressly set forth in the Governing Documents, the Association shall have the powers of a non-profit mutual benefit corporation organized under the laws of the State of California. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described in **Section 3.5**.

3.3.1 Performance of Duties; Commencement of Association's Duties and Powers. The Association shall have the power to undertake all of the express duties required to be performed by the Association. The duties, rights and powers of the Association as described in this Declaration shall commence from and after the date of the conveyance of fee ownership of a Unit from Declarant to a First Purchaser and the Association shall thereupon assume all such duties and such rights and powers.

3.3.2 Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

3.3.3 Right of Enforcement. The Association, in its own name and on its own behalf, or on behalf of any Owner who consents, shall have the power to (a) take disciplinary action and/or assess monetary fines against an Owner for violation of the Governing Documents by such Owner or their Invitees, (b) commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents, (c) after Notice and Hearing, suspend the rights to use any portion of the Association Property or membership rights or privileges and/or (d) enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges (other than voting rights) and/or can assess monetary fines against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions, in accordance with the procedures set forth in this Declaration and in the Bylaws; provided, however, that unless such suspension is due to a failure to pay Assessments pursuant to **ARTICLE 5**, such suspension shall not last longer than sixty (60) days. In no event shall the Association: (i) suspend an Owner's right and easement of access for ingress and egress over the Association Property to the extent necessary to provide access and utility service to the Residential Unit; or (ii) suspend an Owner's voting rights as a Member. Notwithstanding the foregoing, this Section remains subject to **Sections 15.5.2** and **15.5.3(k)** regarding attorneys' fees.

3.3.4 Delegation of Powers. The Association shall have the power to delegate its rights, authority, powers and responsibilities, in whole or in part, under the Governing Documents to professional managers, committees, officers, employees or consultants as may be deemed necessary by the Board.

3.3.5 Right of Entry and Enforcement. Except in the case of an Emergency, in which case no prior notice need be given, the Association or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter in or on to the interior of any Unit for the purpose of (a) construction, maintenance or repair, (b) enforcing the provisions of the Governing Documents or to perform its obligations under the Governing Documents to cure any default by an Owner, or (c) inspecting, maintaining and repairing the Improvements, if any, located within said Unit which are required to be maintained by the Association as provided in this Declaration. Such Persons shall not be deemed guilty of trespass by reason of such entry.

3.3.6 Easements and Rights of Way. The Association shall have the power to exercise any of the easements and other rights granted to the Association under **ARTICLE 2**, Declarant or the Association may grant and convey to any third party non-exclusive easements and licenses for use and rights of way in, on, over or under any Association Maintenance Areas in accordance with the provisions of this Declaration so long as such easements do not materially and adversely interfere with the Owners' rights set forth in this Declaration. The affirmative vote of Members owning at least a Majority of the Condominiums shall be required before the Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 4600. A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the procedures set forth in the California Civil Code Section 5100 *et seq.* and the rules adopted by the Board pursuant thereto

3.3.7 Dedication. The Association may dedicate any of the Association Property to an appropriate public authority for public use as provided in this Declaration.

3.3.8 Capital Improvements. Subject to the provisions of **Section 5.6**, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Maintenance Areas. Any Capital Improvement which benefits only the Residential Owners shall be approved by the consent of two-thirds (2/3) of the Residential Owners, and in such case, the cost for such Capital Improvements shall be assessed against only the Residential Owners. If such Capital Improvement is for the exclusive benefit of the Commercial Owners and is to be assessed solely against the Commercial Owners, then such Capital Improvement shall be approved by the consent of two-thirds (2/3) of the Commercial Owners.

3.3.9 Acquire Property. The Association shall have the power to acquire and hold real and personal property as may be necessary or convenient for the management or operation of the Association Property, the administration of the affairs of the Association or for the benefit of the Owners, and may dispose of the same by sale or otherwise.

3.3.10 Enter Into Maintenance, Cost Sharing and Easement Agreements. The Association shall have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent or in the vicinity of the Property (including, without limitation, Governmental Agencies) or any owners associations. Unless otherwise specified in the agreement or a Supplementary Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Property shall be binding on the Association.

3.3.11 Enter Into Maintenance and Subsidy Agreements. Notwithstanding any other provisions of this Declaration regarding the term of contracts with Declarant for providing services to the Association, Declarant may enter into one or more written maintenance or subsidy agreements with the Association under which Declarant shall pay all or any portion of the Common Expenses and perform all or any portion of the Association's Maintenance Obligations in exchange for a temporary suspension of all or a portion of the Regular Assessments for Residential Units owned by Declarant. Each such

maintenance or other agreement shall be for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended as Common Expenses. The Association shall also have the power to enter into agreements with Declarant for the use of certain facilities prior to conveyance of such facilities to the Association.

3.3.12 Contract for Goods and Services. Subject to the limitations set forth in **Section 3.5**, the Association has the power to contract for goods and services for the benefit of the Community that are necessary for the Association to perform its duties and obligations under the Governing Documents (including legal, management and accounting services) and/or as may be required by Governmental Agencies. Any agreement for professional management of the Community or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the consent of a Majority of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

3.3.13 Election of Officers. The Board shall have the power to elect officers of the Association, and to fill any vacancy on the Board except for vacancies created by the removal of a Board member as set forth in the Bylaws.

3.3.14 Smoking Rules. The Board is authorized to adopt rules regarding smoking within the Community, including, without limitation, rules prohibiting smoking within the individual Units and throughout the Association Property.

3.3.15 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of at least sixty-seven percent (67%) of each class of Members. Notwithstanding the foregoing, in no event may the Association borrow money to fund any litigation by the Association relating to the Community or the Improvements unless the consent of ninety percent (90%) of each class of Members and the consent of the First Mortgagee is obtained.

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

3.3.17 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or any portion thereof, on behalf of all Owners; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 *et seq.*, such that from and after the first election of directors in which the Class A Members of the Association participate, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Property pursuant to Civil Code Section 895 *et seq.* The Association shall comply with such non-adversarial procedures in bringing any such claims or actions.

Each Owner hereby agrees to delegate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of such claims. Notwithstanding the foregoing, this Section remains subject to **Sections 15.5.2 and 15.5.3(k)** regarding attorneys' fees.

3.3.18 Assignment of Maintenance Responsibilities. The Association shall have the power to relinquish or assign its maintenance responsibilities to any Governmental Agencies, including without limitation, maintenance or assessment districts, utility companies and/or school districts; provided that such Governmental Agency shall have accepted such maintenance responsibility of the Association.

3.3.19 Electric Car Charger. The Association shall have the right to charge a Residential Owner using an Electric Car Charger Parking Space for the electricity consumed by the electric car charger for that space if necessary.

3.4 Duties of the Association. In addition to the powers described above, and without limiting their generality, the Association, has the power and the obligation to perform each of the duties set forth below.

3.4.1 Applicable Laws and Governmental Entitlements. The Association shall comply with all Applicable Laws and the Governmental Entitlements and Storm Water Agreement.

3.4.2 Obligations Under Governing Documents. The Association shall perform all duties that may be expressly imposed on the Association in the Governing Documents.

3.4.3 Acceptance of Association Maintenance Areas. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall accept any Association Property and Improvements situated thereon conveyed by Declarant and/or created under this Declaration and shall maintain, repair, replace, operate, and otherwise manage all of the Improvements and facilities required to be maintained by the Association, and all personal property acquired by the Association in accordance with the terms and provisions of the Governing Documents and the Governmental Entitlements. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents. The Association shall comply with the requirements of any agreements entered into between Declarant and a Governmental Agency pertaining to the Association Maintenance Areas. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of such Improvements, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Association Maintenance Areas and/or undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provisions for enforcement set forth in **ARTICLE 15**.

3.4.4 Utilities. The Association shall acquire, provide and pay for water and other utility services for the Association Maintenance Areas to the extent necessary. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Association Maintenance Area reasonably necessary to the ongoing development and operation of the Community.

3.4.5 Maintenance of Community. The Association shall perform the maintenance, repair and replacement obligations described in **ARTICLE 7**.

3.4.6 Management. The Association shall have the duty to retain a professional manager or other Persons and contract with independent contractors or managing agents who have professional experience in the management of similar planned communities to perform any services required for the maintenance, protection, operation and preservation of the Property.

3.4.7 Assessments. The Association shall establish, determine, levy, collect and enforce payment of all Assessments and cause to be prepared all budgets and financial statements and establish and maintain a working capital and contingency fund as required by the Governing Documents.

3.4.8 Assignment of Maintenance Responsibilities. The Association shall have the right to relinquish or assign its maintenance responsibilities to any Governmental Agencies, including without limitation, maintenance or assessment districts, utility companies and/or school districts; provided, that such Governmental Agency shall have accepted such maintenance responsibility of the Association.

3.4.9 Taxes and Assessments. The Association shall have the duty to pay all real and personal property taxes levied against the Association Property or any other taxes or assessments which could become a lien on the Association Property or any portion thereof. Such taxes and assessments may be contested by the Association provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. If all or some of the Units are taxed under a blanket tax bill, each Owner shall pay his or her proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated among the Owners and their Condominiums, based upon the prorated approximate square footage of each Unit. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay the proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall add to the Regular Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the close of escrow for the sale of ninety percent (90%) of the Condominiums in the Community this Section may not be amended without the express written consent of Declarant for two (2) years after the conveyance of the first Residential Unit pursuant to a Public Report.

3.4.10 Liens and Charges. The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association.

3.4.11 Members' Approval of Certain Actions. To the extent permitted by Applicable Law, in the event any claim or other actions brought by the Association against Declarant, including without limitation claims brought under California Civil Code Section 895, *et seq.* involving allegations of construction defects relating to the Association Property or Condominiums is not resolved pursuant to the non-adversarial procedures set forth in **ARTICLE 15** and the Fit and Finish Warranty, as applicable, the Association shall not initiate a further action or arbitration proceeding under **ARTICLE 15** or the Fit and Finish Warranty without first obtaining the consent of the Owners other than Declarant constituting a Majority of the Voting Power. Each Owner and the Association, by acceptance of a deed to a Condominium or Association Property, as applicable, agrees that because representative claims (i.e. claims related to the Association Property or claims by the Association on behalf of the Owners) by the Association may create disclosure requirements and/or may impair the ability of Owners to sell or finance their Condominiums, the Association must obtain the consent of a Majority of Owners before filing such representative claims. Each Owner and the Association acknowledge that obtaining such consent is a reasonable requirement to ensure that each Owner is given the ability to evaluate the impact such action or arbitration proceeding may have on the value, sale and/or financeability of Condominiums.

3.4.12 Architectural Control. The Association shall have the duty to promulgate architectural standards and procedures as set forth in the Architectural Guidelines and may appoint or remove members of the Architectural Committee or hire a consultant in connection therewith in accordance with the provisions of **ARTICLE 8**.

3.4.13 Association Rules. The Board shall adopt, and be entitled to modify and enforce the Association Rules as it deems reasonable. The Association Rules shall govern the Community. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the other Governing Documents. The Association is specifically authorized to adopt rules regarding smoking within the Community, including without limitation, rules prohibiting smoking within the individual Units and throughout the Association Property. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of the other Governing Documents. Notwithstanding any provision of this Declaration to the contrary and to the extent Civil Code Section 4340 *et seq.* is applicable to the Association Rules, any rule which is considered to be an Operating Rule under California Civil Code Section 4340 *et seq.* may not be adopted, changed or amended except by and pursuant to the procedures set forth in California Civil Code Section 4340 *et seq.*

3.4.14 Cost Center Administration. The Association shall administer and perform any obligations associated with any Cost Center created pursuant to this Declaration.

3.4.15 Insurance. The Association shall maintain the insurance described in **ARTICLE 10.**

3.4.16 Notice Prior to Litigation. The Association shall notify all Owners of any litigation filed for or on behalf of the Association. The notice shall include a proposed budget for the litigation (including, without limitation, experts' fees and costs, consultants' fees and costs and the costs of the proceedings) and an explanation of the source of the funds for the litigation. Such notice shall also provide an explanation of why the litigation is being initiated or defended. The notice must state that the Members have a right to review an accounting for the litigation provided in Section 5520 of the California Civil Code, which will be available at the Association's office. Any such litigation which is filed shall also conform to the requirements set forth in **ARTICLE 15.**

3.4.17 Financial Matters. The Association shall prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

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

3.4.19 Inspections. The Association shall perform all inspections as and when required under the Association Maintenance Manual.

3.4.20 Warranties. The Association shall comply with the terms of each warranty in favor of the Association, if any, for any equipment or facilities within the Association Property, which warranties may be impaired or eliminated if the Association fails to maintain in effect certain maintenance contracts. The Association acknowledges that warranties may require the Association to maintain certain maintenance contracts in effect and, to the extent the Board discontinues such maintenance contracts, the effectiveness of the warranty may be impaired or eliminated.

3.4.21 Maintenance Manuals. The Association shall maintain at the offices of the Association a copy of the Owner Maintenance Manual shall make available to every Owner upon request a copy of the Owner Maintenance Manual. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Owner Maintenance Manual and the

Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. The Association shall require that any management company hired by the Association for the Community: (i) ensures that review of the Association Maintenance Manual requirements and issues is included on the agenda of each meeting of the Board; (ii) ensures that the Association Maintenance Manual is brought to each regular meeting of the Board; and (iii) ensures that the Association Maintenance Manual is updated with all inspection reports for the Association Property or Association Maintenance Areas or any other Association maintained areas.

3.4.22 Minutes of Board Meetings. The Association shall supply copies of the minutes or a summary of the minutes of any meeting of the Board to Declarant within thirty (30) days of the applicable meeting of the Board for a period of one (1) year after the conveyance of the last Condominium within the Property by Declarant to a First Purchaser.

3.5 Limitations on Authority of Board.

3.5.1 Actions Requiring Member Approval. The Board shall not take any of the actions listed below except (a) with the vote or written consent of a Majority of the Members of each of Class A and Class B during the time the Class B Members voting structure set forth in **Section 4.2** is in effect; or (b) except with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of at least a Majority of the Members of the Association including at least a Majority of Association Members other than Declarant after conversion to a single Class A voting membership, except that if (i) any of the actions set forth below are actions which only relate to the Residential Condominiums, then only the consent of a Majority of the Residential Owners shall be required, and (ii) if the action only relates to the Commercial Condominium, then only the approval of a Majority of the Commercial Owners shall be required.

(a) Incur aggregate expenditures for capital improvements to the Association Maintenance Areas in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(b) Sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(c) Pay compensation to Members for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association; or

(d) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association Maintenance Areas for a term longer than one (1) year with the following exceptions:

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

(ii) 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;

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

(iv) An agreement for the sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years duration, provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(v) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits short-rate cancellation by the insured;

(vi) 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 obligations upon ninety (90) days' written notice of termination to the other party;

(vii) A contract submitted to the DRE in connection with an application for a Public Report; and

(viii) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association.

3.5.2 Cost Center Limitation. For so long as Declarant has the rights under **ARTICLE 9**, neither the Association nor any Owner, without the prior written consent of Declarant, shall create or eliminate a Cost Center, special benefits area or other such device to apportion any Common Expenses of the Association against fewer than all of the benefitted Owners and their Residential Units.

3.5.3 Property Manager. The Association shall not hire any employees. The manager of the Association shall at all times be a professional manager operating as an independent contractor. The Association shall not discontinue the management of the Association by a professional, and certified or accredited management company without the vote of (a) Declarant, so long as Declarant owns any Unit within the Community, or two (2) years after the first conveyance of a Residential Unit by Declarant to a First Purchaser and (b) a vote of seventy-five percent (75%) of the Voting Power of the Association and their First Mortgagees. If the Association votes to discontinue the management of the Association by a certified or accredited professional manager in accordance with the procedures set forth above, then any replacement manager shall have at least five (5) years' experience in the management of mixed use condominium communities and shall have earned accreditation or certification from a professional association management organization such as the Professional Community Association of Managers designation from the Community Association Institute.

3.6 Indemnification of Management Parties. The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission what such Person reasonably believed was an official act. Management Parties are deemed to be agents of the Association when they are performing official acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an official act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by Applicable Laws on such terms and subject to such conditions as the Association may impose.

3.7 Personal Liability. No volunteer, officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant (each a "**Management Party**" and collectively, "**Management Parties**"), shall be personally liable to any Owner, or to any other Person, including the

Association, for any error or omission of any Management Party if such Person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 5800, any person who suffers bodily injury, including, without limitation, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Community either as a tenant or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer", as defined in California Civil Code Section 5800, shall not recover damages from such Board member if such Board member committed the act or omission within the scope of its Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 5800 have been satisfied.

3.8 Additional Provisions. Notwithstanding any provisions of this Declaration to the contrary, by accepting a deed for a portion of the Property, the Association and the Owners acknowledge and agree that there may be Applicable Laws for the operation of the Association and the Property by the Association, including, without limitation, the Davis-Stirling Common Interest Development Act of Section 4000, *et seq.* of the California Civil Code and the Association and Owners shall comply with such provisions to the extent required by such Applicable Laws.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

4.1 Membership.

4.1.1 Qualifications. Each Owner of a Condominium that is subject to Assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until its ownership interest in the Condominium(s) ceases at which time its membership in the Association shall automatically cease.

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

4.1.3 Transfer of Membership. The Association membership of each Owner shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

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

4.2 Number of Votes. The Association shall have two (2) classes of voting membership. The voting rights described in **Sections 4.2.1** and **4.2.2** shall constitute the Voting Power:

4.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in **Section 4.2.2** below), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) Person holds an interest in any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Condominium.

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

(a) The date the total outstanding votes held by Class A Members equals the total outstanding votes held by the Class B Member; or

(b) The second (2nd) anniversary of the first close of escrow of a Condominium to a First Purchaser.

4.3 Member Approval. As long as Class B membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in **Section 3.4.11**. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a Majority of the Members of the Association including at least a Majority of Members other than Declarant.

4.3.1 Special Voting Rights for Owners of Residential Condominiums. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following shall require the approval of a Majority of the Voting Power of the Residential Owners, unless a higher percentage is required under this Declaration in which case the higher percentage shall apply:

(a) Any matter requiring a vote of Owners relating to the allocation to, or increase or decrease of the assessments under the Residential Budget or assessments attributable only to the Residential Owners except that, if California Civil Code Section 5600 *et seq.* or any similar Applicable Laws requires the approval of all Owners, then this provision shall not apply;

(b) Any matter requiring a vote of Owners relating to the Residential Facilities and related Improvements; and

(c) Any changes to the Community Handbook affecting solely the Residential Condominiums.

4.3.2 Special Approval Rights for the Commercial Owners. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following shall require the approval of a Majority of the Commercial Owners:

(a) Any matter relating solely to the Commercial Condominiums;

(b) Any changes to the Community Handbook affecting solely the Commercial Condominiums; and

(c) Any issue which would adversely impact the profitability of the Commercial Units in connection with a use otherwise permitted by this Declaration.

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

4.5 Cost Center Approvals. Notwithstanding any other provisions of the Governing Documents, any action relating solely to the Cost Center shall require the approval of the prescribed

percentage of the class or classes of Members of only those Owners within such Cost Center. Any amendment of this Declaration to eliminate or change the provisions of this Declaration relating to Cost Center shall require the approval of the prescribed percentage of the class or classes of Members or the approval of Members other than Declarant (if applicable) of those Owners within such Cost Center.

ARTICLE 5 ASSESSMENTS

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Condominium owned, hereby covenants, and each other Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments. All Assessments levied hereunder, together with Additional Charges, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment (as defined in **Section 5.14.4**). Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Person who owned the Condominium at the time when the Assessment fell due and shall bind its heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent Assessments, the personal obligation for delinquent Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent Assessments. If more than one Person was the Owner, the personal obligation to pay such Assessment or installment respecting such Condominium shall be both joint and several.

5.2 Funds Held in Trust. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. A general operating fund shall be established for current expenses of the Association.

5.3 Purpose of Assessments. The Assessments shall be used exclusively to perform the obligations and duties of the Association, including, without limitation, the improvement and maintenance of the Association Property and performance of the Maintenance Obligations of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any Assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision in accordance with California Civil Code Sections 4045 and 5520 at the next available meeting. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in California Civil Code Section 5520 which will be available at the Association's office. The accounting shall be updated monthly.

5.4 Regular Assessments.

5.4.1 Payment of Regular Assessments. Regular Assessments for each Fiscal Year shall be established when the Board approves the Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation to pay for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

5.4.2 Budgeting. Each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by Applicable Laws.

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

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

5.5 Special Assessments. If the Board determines at any time that the estimated total amount of funds necessary to defray the Common Expenses for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Association Maintenance Areas, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a Majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association for the then current Fiscal Year, it shall become a Special Assessment. Any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for the then current Fiscal Year, shall be subject to the limitations set forth in **Section 5.9.1**; provided, however, that such limitation shall not apply to Special Assessments levied by the Association to replenish the Association's reserve account as provided in the Section of the Bylaws titled "Reserves." The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by Applicable Laws of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

5.6 Capital Improvement Assessment. In addition to any other Assessments, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with **Section 3.3.8**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. However, if the capital improvement benefits only the Residential Owners without contributions from the Commercial Owners, such Capital Improvement Assessments shall be payable by the Residential Owners. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 5.9.1**.

5.7 Compliance Assessments. The Association may levy a Compliance Assessment against any Owner for bringing an Owner or its Condominium into compliance with the provisions of the Governing Documents as a disciplinary measure for failure to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Maintenance Areas for which the Member was allegedly responsible, and/or any other charge designated a Compliance Assessment in the Governing Documents, together with any Additional Charges related thereto. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be a Compliance Assessment. The Board shall have the authority to adopt a reasonable schedule of Compliance Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies California Corporations Code Section 7341 and California Civil Code Section 5855, the Owner fails to cure or continues such violation, the

Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Compliance Assessment as herein provided for nonpayment of an Assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 5.14**, Compliance Assessments are Assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement does not apply to Additional Charges.

5.8 Formation of Cost Center. Subject to the provisions of **Section 3.3.17**, the Association may establish additional Cost Centers with respect to portions of the Property which directly receive a special benefit and may levy Regular Assessments with a component for such Cost Centers as provided in **Section** Error! Reference source not found., upon a vote by a Majority of the Owners of the Units benefited by the proposed Cost Center. Upon its approval, the new Cost Center Area shall be described in a Supplementary Declaration. From and after the formation of such new Cost Center, it shall be administered by the Association in the same manner as all other Cost Centers. Nothing contained herein shall give the Association any rights to approve Cost Centers established by the Declarant upon the recordation of this Declaration or the recordation of a Supplementary Declaration.

5.9 Changes to Assessments.

5.9.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a Majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of (i) California Civil Code Section 5100 *et seq.* and the rules adopted by the Board pursuant thereto and (ii) California Corporations Code Sections 7510 *et seq.* and 7613. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 5605. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners, pursuant to California Civil Code Section 4070, and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Maintenance Areas, where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Maintenance Areas, or any part of the Community for which the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required by California Civil Code Section 5300; provided, however, that prior to the imposition or collection of a Special Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Special Assessment.

5.9.2 Calculation of Percentage Increase in Regular Assessments. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "**Regular Assessments**" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this

Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in Article 9 of the Bylaws with respect to the Fiscal Year for which an Assessment is being levied.

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

5.9.4 Residential Budget, Shared Budget and Cost Center Budget. The Budget consists of a Shared Budget, a Residential Budget and a Cost Center Budget. The Shared Budget sets forth the portion of the Common Expenses allocable to both the Residential Owners and the Commercial Owners. The Residential Budget sets forth the portion of the Common Expenses allocable only to the Residential Owners. The Shared Budget and Residential Budget shall consist of (a) Common Expenses which are fixed at a uniform rate for all Units to which such Common Expenses apply ("**Fixed Expenses**") and (b) Common Expenses which consist of certain line items which are variable ("**Variable Expenses**"). The Variable Expenses in the Shared Budget shall be allocated in accordance with the formula set forth in **Exhibit "C"** attached hereto and incorporated herein ("**Shared Variable Expense Allocation**").

5.9.5 Cost Center Budget. Each Owner receiving the benefit of a Cost Center shall pay the amount set forth in the applicable Cost Center Budget. The Cost Center Budget may include, without limitation, estimated or actual costs and expenses incurred by the Association for administering and maintaining the Cost Center, obtaining and maintaining insurance coverage related to the Cost Center, providing utility service to the Cost Center and funding reasonable reserves for the repair or replacement of the Cost Center. The Association shall provide for a separate accounting for the funds which are collected and expended on behalf of a Cost Center. The Association shall also provide for a reserve study and the annual review and disclosure of the reserves applicable to a Cost Center to the same extent required for the other budgetary components.

5.10 Rate of Assessment. Except as otherwise provided for herein, that portion of Regular, Special and Capital Improvements Assessments set forth in the Shared Budget and the Residential Budget as Variable Expenses shall be allocated by the Board as provided in **Exhibit "C"** attached hereto. All other items covered by any Regular, Special and Capital Improvement Assessments set forth in the Shared Budget and the Residential Budget shall be fixed at a uniform rate for all Units. Compliance Assessments shall be levied directly to the individual Units.

5.11 Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments shall commence as to all Condominiums on the first day of the month following the conveyance of the first Condominium to a First Purchaser.

5.12 Notice and Assessment Installment Due Dates. The Association shall provide notice by first-class mail to each Owner (pursuant to California Civil Code Section 4040) of any increase in the Regular Assessment, and notice of any Special Assessment or Capital Improvement Assessment not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment or the Special Assessment or Capital Improvement Assessment becoming due. The due dates for the payment of Regular Assessments normally shall be payable the first day of each month unless some other due date is established by the Association. The due date for Special Assessments or Capital Improvement Assessments shall be specified in the notice provided by the Association and if such Special Assessments or Capital Improvement Assessments are payable in installments, such installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, an interest charge at the Applicable Rate and reasonable costs of collection, including attorneys' fees and costs, but which shall not in any event exceed the maximum rates permitted under California Civil Code Section 5600 *et seq.*

5.13 Estoppel Certificate. The Association, on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating both of the following: (i) whether or not to the knowledge of the Association, a particular Owner is in default in connection with the payment of Assessments as to such Owner's Condominium under the provisions of this Declaration; and (ii) the dates to which installments of Regular Assessments, Special Assessments and/or Capital Improvement Assessments have been paid as to such Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of Assessments of which the signer had no actual knowledge.

5.14 Collection of Assessments, Liens.

5.14.1 Right to Enforce. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board can enforce the obligations of the Owners to pay Assessments by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 5.14.6** enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights.

5.14.2 Notice of Assessments and Foreclosure. The Board shall distribute a written notice regarding Assessments and foreclosure as set forth in California Civil Code Section 5730 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

5.14.3 Delinquent Assessments. In collecting delinquent Assessments, the Association shall comply with the requirements of California law, including without limitation, California Civil Code Section 5650. As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Condominium, the Association shall: (a) notify the delinquent Owner of certain matters; and (b) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required by California Civil Code Sections 5900 through 5920.

5.14.4 Creation of Lien. If there is a delinquency in the payment of any Assessment (other than a Compliance Assessment) any amounts that are delinquent, together with any Additional Charges, shall be a lien against each applicable defaulting Owner's Condominium upon the recordation in the Official Records of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in California Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record for the applicable Condominium for which the lien is being filed as provided in California Civil Code Section 5675.

5.14.5 Assignment. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 5735.

5.14.6 Notice of Default; Foreclosure. The Board can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700, *et seq.*, can cause the Condominium with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 5700, *et seq.* However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Condominium or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board shall apply payments and follow the procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Condominium to the Association and shall further be deemed to have consented to the appointment of a

receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

5.14.7 Payment of Assessments. Any payments of sums due under this Article shall first be applied to Assessments owed, and only after Assessments owed have been paid in full shall the payments be applied to the Additional Charges. If an Owner requests a receipt after payment of a delinquent Assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

5.15 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent, subject to California Civil Code Section 5650, *et seq.*

5.16 Waiver of Exemptions. Each Owner, to the extent permitted by Applicable Laws, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment, becomes delinquent or any lien is imposed.

5.17 Subordination of Lien to First Mortgages. When a Notice of Delinquent Assessment has been recorded, such Assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, Assessments and other levies that, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Condominium subject to Assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure for any loan which is not FHA or VA insured) of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any Assessments thereafter becoming due or from the lien of any subsequent Assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Condominiums.

5.18 No Offsets. All Assessments shall be payable in the amounts specified by the particular Assessment and no offsets against such amounts shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

5.19 Personal Liability of Owner. No Owner may exempt himself or herself from personal liability for Assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by itself from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

5.20 Transfer of Property. The selling Owner shall not be liable for any Assessment levied on a Condominium after the date of transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall remain responsible for all Assessments and charges levied on his or her Condominium prior to any such transfer.

5.21 Failure to Fix Assessments. The omission by the Board to fix the Assessments hereunder before the expiration of any Fiscal Year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from

the obligation to pay the Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

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

5.23 Association Property Improvements. In the event that the Improvements to be installed by Declarant on the Association Property have not been completed prior to the issuance by the DRE of a Final Subdivision Public Report, and in the further event that the Association is the obligee under a bond to secure performance by Declarant to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the Voting Power, excluding the vote of Declarant, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a Majority of the Voting Power, excluding the vote of 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 the decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 6 USE RESTRICTIONS

6.1 Use Restrictions Applicable to Residential Condominiums.

6.1.1 Residential Use. Except as expressly provided in **ARTICLE 8** with respect to Declarant and as further provided below, each Residential Unit shall be used for residential purposes exclusively and no part of the Community shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose, without the prior written consent of the Board. In deciding whether to permit an otherwise nonconforming use hereunder, the Board shall consider the potential effect upon traffic in the Community and interference with or annoyance of neighbors; provided, however, a nonconforming use shall not be permitted unless such use is incidental to the residential use of the Residential Unit and is permitted by Applicable Laws. Any Owner seeking Board approval of the operation of an in-home business shall provide such information as may be reasonable for the Board to evaluate the potential effects of the business upon the residential character of the Community. Notwithstanding any provision of this Declaration, state law may expressly authorize the operation of in-home businesses of certain categories that meet specific criteria ("**State-Authorized Businesses**"). Any State-Authorized Business shall be operated according to Applicable Laws. Any Owner that intends to operate a State-Authorized Business within the Owner's Residential Unit, or to permit the operation of a State-Authorized Business within the Owner's Residential Unit, shall notify the Board in writing at least forty-five (45) days prior to commencement of such business. Such written notice shall include such information as may be reasonable for the Board to evaluate the potential effects of the business upon the

residential character of the Community, and the Owner shall promptly provide additional information in writing as may be requested by the Board in connection with its evaluation of the effects of the State-Authorized Business on the Community; provided, however, Declarant may use any of the Condominiums owned by Declarant as model homes, sales offices, construction offices or storage for the Community during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums are sold and conveyed by Declarant to separate Owners.

6.1.2 Commercial Use. Except for the Commercial Units and as otherwise provided in this Declaration, including without limitation **Section 6.1.1**, no part of the Community shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

6.1.3 Rental of Residential Units. An Owner shall be entitled to rent a Residential Unit subject to the restrictions contained in the Governing Documents and any contractual agreement between Declarant and each original Owner for such Owner's Residential Unit as to such parties, any other restrictions of record and all Applicable Laws. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with the Governing Documents shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall be provided to the Association. Owners shall, at all times, be responsible for their Lessee's compliance with the Governing Documents. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Owner may lease such Owner's Residential Unit for hotel, motel or transient purposes or through AirBnB or VRBO or any comparable service. Any lease which is either for a period of fewer than one hundred eighty (180) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

6.1.4 Actions Against Lessee. Additionally, if any Lessee is in violation of the Governing Documents, the Association may, to the extent permitted by Applicable Laws and to the extent the Association determines such actions are necessary in its prudent business judgment, bring an action in its own name and/or in the name of the Owner to have the Lessee evicted and/or to recover damages. The Association shall give the Lessee and the applicable Owner at least twenty (20) days' prior written notice of the nature of the violation of the Governing Documents. If such Owner or Lessee fails to cure the violation within such twenty (20) day period, then the Association may pursue its remedies under this Section. If the court finds that the Lessee is violating or has violated any of the Governing Documents, the court may find the Lessee in violation of the rental agreement and subject to an unlawful detainer action notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Lessee is not otherwise in violation of the Lessee's rental agreement. For purposes of granting an unlawful detainer against the Lessee, the court may assume that the Association is a third party beneficiary under the rental agreement and as such may exercise all the rights of the Owner thereunder. The remedy provided herein is not exclusive and is in addition to any other remedies which the Association has. The Association may recover against the Owner all of its costs, including, without limitation, court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. If the Owner fails to pay such costs within thirty (30) days after receipt of written demand, the Association may levy a Compliance Assessment to recover the costs and attorneys' fees and any other Additional Charges.

6.1.5 Time Sharing. A Residential Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods. The term "time sharing" as used herein shall include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Residential Condominium, Condominiums or any portion thereof in the Community rotates among various persons, either corporate partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time six (6) months or less.

6.1.6 Animals. Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Community. No

Owner shall keep more than a total of two (2) domestic dogs or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) within such Owner's Residential Unit. Domestic reptiles, birds, rodents and fish shall be permitted, except poisonous or dangerous reptiles, so long as such animals are kept in the interior of a Residence. No animal shall be permitted to be maintained, at any time, within any recreational areas or Residential Facilities within the Community. No animals shall be permitted in the Commercial Units except for service animals. Notwithstanding the foregoing, no pet may be kept within the Community in violation of Applicable Laws and the Association Rules may further limit or restrict the keeping of pets and the Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed to constitute a nuisance to any other Owner or which constitutes a threat to personal safety. Each Owner shall be absolutely liable to other Owners and their Invitees for any injury to persons or damage to property caused by any pet brought upon or kept upon the Community by such Owner or any Invitee of such Owner. Each Owner shall clean up after animals that have deposited droppings or otherwise used any portion of the Community or public street abutting or visible from the Property. Animals must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Residential Unit. Animals shall not be left unattended anywhere within the Association Property or any Exclusive Use Areas. Nothing contained herein shall constitute a restriction on human assistance animals.

6.1.7 Signs and Displays. No sign, advertising device or other display of any kind shall be displayed in the Community, except for the following:

(a) entry monuments and Community identification signs, subject to compliance with City signage criteria;

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

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

(i) the sign is a reasonable size; and

(ii) the sign is in compliance with the Architectural Guidelines or is otherwise authorized pursuant to **ARTICLE 8**;

(d) noncommercial signs permitted by California Civil Code Section 4710; and

(e) such other signs or displays authorized pursuant to **ARTICLE 8**.

In addition to the foregoing, all signs must comply with all Applicable Laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **ARTICLE 9**.

6.1.8 Parking and Vehicular Restrictions.

(a) **Authorized Vehicles.** The following vehicles are "**Authorized Vehicles**": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to the requirements set forth in **subsections (b) and (c)** below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over the driveway, or sidewalks in the Community or extends beyond the limits of

the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

(b) **Prohibited Vehicles.** The following vehicles are "**Prohibited Vehicles**": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the Board, (j) motorcycles, and (k) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

(c) **General Restrictions.** All Authorized Vehicles owned or operated by or within the control of a Residential Owner and kept within the Community shall be parked in such Residential Owner's Assigned Parking Space. Parking Spaces are intended for use by Occupants of the Residential Units only, and may not be sold, leased or otherwise used by non-Occupants. No vehicle shall be parked in any Assigned Parking Space if such vehicle does not completely and clearly fit between the painted parking lines designated for an Assigned Parking Space or otherwise physically fit wholly within the designated space or any other portion of the Parking Garage designed for ingress and egress of vehicles. There is limited clearance in the Parking Garage. Every Owner should determine whether his or her vehicle will fit within such Owner's Assigned Parking Space, and should be aware that if his or her Assigned Parking Space is reassigned, it is possible that the new Parking Space will be smaller and/or have lower clearance. There shall be no parking in the Community that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The Parking Spaces shall be used for parking Authorized Vehicles only. No maintenance, repair, restoration, or construction of any vehicle shall be conducted in the Community.

(d) **Parking Regulations.** Subject to the rights of Declarant to control the Parking Spaces which have not been assigned by Declarant, the Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas not assigned to individual Condominiums, including, without limitation, designating "no parking" areas thereon. Any parking areas shall be subject to such further reasonable control and use limitations as the Board may establish. The Board shall determine, in its discretion, whether there is a violation of the parking and vehicular restrictions set forth in this Declaration or established by the Board, and, if such noncompliance is determined by the Board to exist, the Board shall have the power to enforce all parking and vehicle use regulations applicable to the Community, including the power to remove violating vehicles from the Community pursuant to California Vehicle Code Section 22658 or other applicable statute.

6.2 Use Restrictions Applicable to the Commercial Condominiums. The following restrictions shall be applicable to the Commercial Condominiums. The Commercial Condominiums shall not be occupied and used except for commercial purposes. For purposes of this Section, "commercial purposes" shall include retail sales businesses, offices and service business. All uses must comply with applicable federal, state and local laws and regulations.

6.2.1 Prohibited Uses. The Commercial Condominiums shall not be used for an activity or purpose considered by the Association to pose a safety hazard or health risk within the Community including but not limited to, the following:

(a) Any noise or sound that is determined by the Board to be unreasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;

- (b) Any noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance;
- (c) Any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks;
- (d) Any distillation or refinery facility (excepting therefrom any microbrewery or similar business);
- (e) Any dumping of garbage or refuse, except in places designated for disposal by the Association;
- (f) Any motorized vehicle repair shop, automobile dealership or automotive supply store;
- (g) Any car wash;
- (h) Any pool hall, game arcade, betting facility or video or games arcade;
- (i) Any business which derives seventy-five percent (75%) or more of its gross sales volume serving or selling alcoholic beverages;
- (j) Any indecent or pornographic uses, massage parlor, adult bookstore, peepshow store, strip clubs or any other similar store or club; and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;
- (k) Any tattoo parlors or body piercing;
- (l) Any cannabis club or medical marijuana dispensary;
- (m) Maintaining or keeping of any animals;
- (n) Any laundromat, surplus or thrift store, or bankruptcy sale;
- (o) Any restaurant or other establishment requiring a grease duct for operation;
- (p) Any place of religious worship; and
- (q) Any dry cleaning facility or store, except that a "drop off" for dry cleaning shall be permitted so long as the actual dry cleaning is conducted at a site outside the Community.

6.2.2 Advertising. No Owner or Lessee shall do the following without the prior written consent of the Board: (a) employ an advertising medium which can be heard or experienced outside of the Commercial Units, including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, compact disk players, radios or television; or (b) distribute, or cause to be distributed, any handbill or other advertising device in the Association Property. Identification and other signage shall be governed by **Section 6.2.6.**

6.2.3 Commercial Invitees and Lessees; Insurance. Each Commercial Owner shall be responsible for compliance by their Invitees and Lessees, with the provisions of the Governing Documents. The Owners or their Lessees shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use of the Commercial Unit, and shall demonstrate proof of such

insurance to the Board annually upon request. Any rental or leasing agreement shall be in writing, shall provide that the lease or rental is subject to the Governing Documents and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the lease agreement. A copy of the Governing Documents shall be made available to each Lessee by the Owner so renting or leasing. Each Commercial Owner shall, at all times, be responsible for their Lessee's compliance with all of the provisions of the Governing Documents. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Commercial Owner may lease a Commercial Condominium for a period less than thirty (30) days, or for hotel, motel or transient purposes through VRBO or AirBnB (or other comparable service) or any other purpose inconsistent with the provisions of this Declaration. If a Commercial Condominium is rented, then the Owner shall submit names and contact numbers for their Lessees to the management company for the Community.

6.2.4 Unoccupied Commercial Unit. During any period that a Commercial Unit is unoccupied, the Owner shall take such reasonable steps as required by Declarant, or by the Board after Declarant no longer owns any interest in the Community, to keep those portions of the unoccupied Commercial Unit visible from public areas by covering all windows and otherwise maintained such that it is not readily apparent that business is not being conducted therein. Failure to maintain a Commercial Unit in compliance with this **Section 6.2.4** may result in fines imposed on the Owner of such Commercial Unit, as determine in the sole discretion of the Board.

6.2.5 Restrictions on the Commercial Units. Except as otherwise stated herein or in the Architectural Guidelines, the Board may not restrict the reasonable use of the Commercial Units as provided for herein. All uses shall be in conformity with the zoning ordinances of the City. Commercial uses by their nature create a variety of impacts that would not occur, or would occur to a lesser degree, in a community with only residential uses. Such impacts include, without limitation, vehicular and pedestrian traffic, light, noise, odors and pests. The benefits of living in a mixed-use community with commercial uses are deemed to outweigh the additional impacts from such uses. Each Commercial Owner shall comply with the restrictions set forth below.

(a) All utilities serving the Commercial Units shall be provided independent from the utilities servicing the Residential Condominiums, provided however, one (1) main sewer line will serve the entire Condominium Building.

(b) If a commercial use causes an increase in the cost of insurance required to be maintained by the Association for any portion of the Community, such Commercial Owner shall pay the Association an amount equal to such increase.

(c) The Owner or Lessee of a Commercial Condominium shall make commercially reasonable efforts to minimize disturbances to the Occupants from noise or odors from the use of the Commercial Units.

6.2.6 Signage. The Owner or Lessee of a Commercial Condominium shall have the right to display identification and other commercial signs on or in the Commercial Unit and on the exterior wall enclosing the Commercial Condominium consistent with the permitted commercial use, provided that such signage is in compliance with City requirements, Applicable Laws and the Architectural Guidelines. Commercial signage shall be subject to reasonable architectural approval in accordance with **ARTICLE 8**. If proposed commercial signage is disapproved, such disapproval shall be in writing and shall state the specific reasons for disapproval in sufficient detail, so that the proposed signage can be redesigned and resubmitted. So long as Declarant owns any interest in the Community, all identification and other commercial signs (and any changes thereto) are subject to the prior written approval of Declarant. Notwithstanding the foregoing, Declarant shall have the right set forth in **Section 9.4.1** to erect and maintain within the Community (i) job identification signs during the time of construction of any portion of the Community; and (ii) signs, flags, banners and other promotional devices used by Declarant for the purpose of developing, improving and selling Condominiums.

6.2.7 Hold Harmless and Indemnity. Each Commercial Owner assumes all risks which may result from Improvements it makes to its Commercial Condominium, and shall indemnify and hold harmless the Association, Declarant and each other Owner from any claims, actions, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of Improvements in the Commercial Condominium.

6.2.8 Alarms. Any alarm installed in the Commercial Unit shall be the type of alarm which is monitored by a certified alarm company.

6.3 Installations.

6.3.1 Generally. This Section does not apply to Improvements installed by Declarant.

6.3.2 Outside Installations. The following items are prohibited unless installed by Declarant or approved by the Board: (a) outside installations, including, deck covers, hot tubs, wiring, air conditioning equipment, water softeners, other machines and other Improvements; (b) Improvements to deck railings; and (c) other exterior additions or alterations to any Unit or Exclusive Use Area. Notwithstanding the foregoing, religious items may be displayed on the entry door or door frame of an Owner's Unit subject to the restrictions set forth in California Civil Code Sections 1940.45 and 4706.

6.3.3 Inside Installations. Nothing may be done in any Unit or in, on or to the Association Property which may impair the structural integrity of the Condominium Building or which structurally alters the Condominium Building except as otherwise expressly provided in this Declaration. Portions of floors in upper level Residential Units may be constructed with sound control matting or other noise mitigation measures. Owners desiring to replace floor coverings in upper level Residential Units must obtain the prior written consent of the Board in order to ensure that the replacement flooring and its installation is compatible with the noise mitigation materials installed by Declarant.

6.3.4 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained or hung on railings within the Community and there shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Areas or Association Property.

6.3.5 Storage and Other Restrictions for Balconies and Roof Decks. No Owner shall use any Exclusive Use Roof Deck Area, Exclusive Use Balcony Area or Exclusive Use Patio Area for storage purposes, including, without limitation, the storage of bicycles or surf boards. Unless installed by Declarant, all plants kept in the Exclusive Use Roof Deck Areas, Exclusive Use Balcony Areas or Exclusive Use Patio Area shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of Exclusive Use Roof Deck Areas or Exclusive Use Balcony Areas, except as approved by the Board. The Board may require approval of any potted plants. No Owner shall change or alter the surface of any Exclusive Use Roof Deck Area, Exclusive Use Balcony Area or Exclusive Use Patio Area without the consent of the Board.

6.3.6 Exterior Lighting. No additional exterior lighting may be installed by an Owner without the express written consent of the Board. Any exterior electrical, gas or other artificial lighting installed on the Condominium Building shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb any Occupants. Further rules regarding exterior lighting may be promulgated by the Board. Some of the exterior lighting on the Condominium Building provides light to certain exterior portions of the Community and may contain a photocell which will automatically control the operation. Such exterior lighting shall not be manually turned off by the Owners. Holiday lighting shall be in conformance with the Architectural Guidelines.

6.3.7 Water Furniture and Limitations on Size of Aquariums. No water furniture shall be permitted in any Condominium and no Owner shall maintain in its Condominium any aquarium or

other container holding thirty (30) or more gallons of water. Each Owner acknowledges that substantial damage to other Units and/or Association Property may occur as a result of a violation of this restriction.

6.3.8 Vibrations. No Owner shall install or use in its Residential Unit any fixtures or equipment which will cause unreasonable vibrations, noise or annoyance to other Owners.

6.3.9 Governmental Entitlements. Each Owner and the Association shall comply with all applicable requirements and restrictions set forth in the Governmental Entitlements.

6.3.10 Trash Disposal. There is one (1) trash room located in the Parking Garage of the Condominium Building. The trash room shall be used solely by the Residential Occupants. Trash, garbage or other waste shall be deposited only in the trash room. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Community other than in the receptacles customarily used for it, which, shall be located where specifically designated. Either the building maintenance vendor and/or the trash service company will be responsible for wheeling the trash bins to the street for pick-up on a regular basis. Each Commercial Owner shall maintain its trash, garbage and other waste within its Commercial Unit.

6.3.11 Offensive Conduct, Nuisances. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become a nuisance to the residents of the Community. Front doors to the Residential Units shall remain closed except for access to and egress from the Residential Units. Unless otherwise permitted by the Association Rules, no Residential Owner shall serve food or beverages, cook, barbeque, or engage in similar activities, except within such Owner's Residential Unit and Exclusive Use Area, if any.

6.3.12 Sound Attenuation. In any multi-family dwelling, sound may be audible between Residential Units, particularly where the sound level of the source is sufficiently high and the background sound in an adjacent Residential Unit is very low. These sounds may include without limitation, music, voices, animal noises, footsteps, children's noises, furniture movement, appliance usage, water usage and other sounds. To minimize the sound transmission from a Residential Unit, each Owner shall adhere to the following:

(a) On demising walls (party walls), acoustical sealant shall be packed around the point of penetration of all pictures and other decorative items hung from the walls that require nailing or screwing. No holes or other penetrations shall be made in demising walls except for decorative items without the approval required by the Architectural Committee, as described in **ARTICLE 8**. No penetrations of any sort shall be made in the ceilings of any Residential Unit.

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

(c) No Owner shall attach to the walls or ceilings or place on the floor of any Residential Unit anything which will cause unreasonable sound levels, vibrations, noise or annoyance to the Owners of the other Residential Units. No audio, television, stereo, speakers, or other audio visual or media equipment shall be installed in or on any demising wall without the permission of the Board. Speakers for audio, television, stereo, or other audio visual or media equipment shall not be supported from or contact demising walls and shall be elevated from the floor by an adequate acoustic platform. Sound from such speakers must be kept at a reasonable level so as not to interfere with other Owners' enjoyment of their Residential Units.

(d) Pianos shall have adequate acoustic pads under the supports to minimize vibration transmission into the structure.

(e) All exercise equipment shall have adequate acoustic pads so that the use of such equipment does not disturb other Occupants. If the noise caused by the use of exercise equipment is unable to be mitigated so as not to disturb other Occupants, the use of such equipment shall be limited to the hours of 8:00 a.m. to 10:00 p.m.

(f) All furniture shall have roller castors or adequate acoustic pads.

(g) No Owner shall install any hard surface or other flooring or make any other modification to any part of their Residential Unit which may increase sound transmission between their Residential Unit and other part of the Community, including without limitation, tile or hardwood floors and wall or ceilings coverings, unless the prior written approval of the Board has been obtained. As a condition to approving the installation of such modifications, the Owner shall submit to the Board construction specifications clearly describing the proposed modifications in sufficient detail necessary to determine whether sound transmission will be sufficiently mitigated.

6.4 Window Coverings. Temporary window coverings ("**Temporary Window Coverings**") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of ninety (90) days from the date that a Condominium is conveyed to an Owner by Declarant. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residential Unit. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not conflict with the color scheme of the exterior wall surface of the Unit.

6.5 Window Cleaning. Each Owner will cooperate with the Association to provide access to the Association, including access through the Owner's Residential Unit if required, to clean such windows which are the responsibility of the Association to clean. The Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Residential Unit resulting from such entry. Each Owner of a Commercial Unit shall be responsible for cleaning the windows of its own Unit on a daily basis.

6.6 Fire Prevention and Fire Sprinkler Systems. No Owner shall remove, alter or impair or tamper or interfere with the proper operation of any fire prevention or fire sprinkler equipment installed by Declarant in the Owner's Residential Unit.

6.7 Drainage and Erosion Control. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. Owners shall not alter or obstruct the drainage pattern on the Exclusive Use Balcony Areas. For the purpose hereof, "established" drainage is defined as the drainage that exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Board.

6.8 Mechanic's Liens. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Compliance Assessment for such cost of discharge.

6.9 Rights of Disabled. Subject to the provisions of **ARTICLE 8**, the Architectural Guidelines each Owner may modify such Owner's Residential Unit and the route over the Association Property leading to the front door of its Condominium, at such Owner's sole expense, to facilitate access to its Condominium by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons in accordance with Applicable Laws.

6.10 Antenna Restrictions. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (a) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 *et seq.*, 47 CFR § 1.4000 and any other Applicable Laws, rules and decisions promulgated with respect thereto (collectively "**Antenna Laws**"), (b) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (c) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna under the foregoing requirements, other than as described in (a) through (c) above, such Owner may do so only upon the prior approval of the Board pursuant to **ARTICLE 8**. The Association shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws. Notwithstanding any provision hereof, this Section shall be interpreted to comply with state and federal laws applicable to antennas in effect at the time of enforcement of this Section. In that regard, this Section shall not be interpreted or enforced in a manner which would (i) unreasonably delay or prevent installation, maintenance or use of such Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use, or (iii) preclude reception of an acceptable quality signal.

6.11 Compliance with Requirements Regarding Community Storm Water Pollution. Each Owner acknowledges that water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("**NPDES**"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Unit into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all requirements of any other Governmental Agencies. All Owners and the Association are required to comply with such restrictions. Owners are encouraged to consult with the Governmental Agencies concerning the proper disposal of any toxic or Hazardous Materials.

6.11.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the Governmental Agencies and the Storm Water Agreement in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located within a Residential Unit, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris and in accordance with the Storm Water Agreement and any agreements that are recorded or may be recorded against the Community ("**BMP**"). All trash receptacles shall be closed at all times except when disposing of trash. The Association and the Owners shall comply with all applicable BMPs and the Storm Water Agreement and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

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

reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

6.12 Post Tension Slabs. The concrete slabs of the Condominium Building are reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "**Post Tension Slab.**" Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium and/or personal injury. By accepting a grant deed to a Condominium in the Community, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Condominium; (c) such Owner shall not install a floor safe; (d) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Condominium; and (e) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

6.13 Access Restrictions. Except as otherwise expressly permitted hereunder, Owners and their Invitees, shall not at any time or for any reason whatsoever enter upon or attempt to enter upon (i) the areas of the roof of the Condominium Building which are restricted from access, except if necessary to maintain any of the heat pump systems servicing a Condominium or the mechanical or utility systems servicing the Commercial Condominium, in which case access shall only be granted by the Association to approved licensed service contractors; (ii) any portion of the Association Property used by the Association for management, administrative, or other purposes; (iii) the Storm Water Planter Areas; (iv) the mezzanine level of the Condominium Building, except as necessary to maintain HVAC equipment serving an individual Owner's Unit; and (v) utility closets and rooms, without the prior approval of the Board.

6.14 View Impairment. There is no representation that any view exists from any Unit. Each Owner, by accepting a deed to a Unit, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other buildings and on surrounding real property may impair whatever view may exist from the Owner's Residential Unit and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Association on behalf of the Members hereby consent to such view impairment and/or loss of privacy. By accepting a deed to a Unit, each Owner acknowledges that: (a) there are no protected views, and no Condominium is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit, (b) any view from the Unit is not intended as part of the value of the Condominium and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other Owners or of properties surrounding the Community may impair the view from any Unit and/or may allow other persons to have a line of sight into the Owner's Unit, which may affect Owner's use and enjoyment of Owner's Condominium, including Owner's privacy. There are no express or implied easements appurtenant to any Unit for view purposes or for the passage of light and air over another Unit, or any other property whatsoever.

6.15 Compliance with Laws, Etc. Nothing shall be done or kept in any Unit or in the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner or the Association shall permit anything to be done or kept in the Owner's Unit or on the Association Property that violates Applicable Laws, including any Applicable Laws pertaining to the use or storage of any Hazardous Materials.

6.16 Exemption of Declarant. The restrictions set forth in this Article shall not apply to Declarant or any Declarant Parties so long as Declarant or any Declarant Parties own any portion of the

Property, or so long as Declarant is exercising any of its rights under **ARTICLE 9** or any other rights or powers or easements reserved to Declarant under this Declaration.

ARTICLE 7 MAINTENANCE

7.1 Maintenance. Unless the context otherwise requires, as used in this **ARTICLE 7**, "maintenance", "maintain" or "maintaining" means the operation, cleaning, inspection, maintenance of the areas and facilities designated for repair by the Association and/or the Owners and "repair" means restoration and replacement of the areas and facilities designated for maintenance by the Association or Owner. To the extent repair, restoration and replacement is required as a result of damage or destruction under **ARTICLE 11**, then the repair and replacement shall be governed by the provisions of **ARTICLE 11**.

7.2 Maintenance Obligations.

7.2.1 Maintenance Obligations of Residential Owners. Each Residential Owner is responsible for the care and maintenance of the components of such Owner's Residential Unit and Exclusive Use Area, if any, designated for maintenance by the Residential Owner on the Maintenance Responsibility Chart and the applicable Owner Maintenance Manual, including, but not limited to, the cleaning the windows in such Owner's Exclusive Use Balcony Area, if any, and ongoing maintenance of roof drain(s) serving such Owner's Exclusive Use Roof Deck Area, if any. Such maintenance of the roof drains shall be performed in accordance with the requirements of the Storm Water Agreement and all Applicable Laws, and, shall include keeping the roof drains clear of debris and obstructions.

7.2.2 Maintenance Obligations of Commercial Owners

(a) **Commercial Units.** Each Commercial Owner shall perform the maintenance and other obligations set forth in the Maintenance Responsibility Chart and the applicable Owner Maintenance Manual in accordance with the requirements and schedules set forth in the Owner Maintenance Manual, including maintenance of such Commercial Owner's Exclusive Use Patio Area, if any;

(b) **Trash.** Each Commercial Owner shall dispose of its own trash in the trash areas allocated for use by the Commercial Owners; and

(c) **Anti-Graffiti Film.** The Association will install anti-graffiti film on the exterior glass portions of the Commercial Units. Each Commercial Owner is responsible for the maintenance of such anti-graffiti film on the glass of its Unit.

7.2.3 Owners' Compliance with Maintenance Obligations. All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof in compliance with all requirements of the Maintenance Obligations. Each Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Owner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Condominium. If an Owner fails to perform its Maintenance Obligations as required under this Declaration and as set forth in this Article, the Association, in addition to any other rights under this Declaration, shall have the right to cure such failure and the provisions set forth below shall apply.

7.2.4 Maintenance Deficiencies. Upon a finding by the Association of a deficiency by an Owner in its Maintenance Obligations, the Association may provide to the Owner a written notice ("**Notice of Deficiency**"), which shall briefly specify the condition or conditions which the Association finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. In the event that the Association determines that such deficiency continues to exist at the end of the

period of time specified in the Notice of Deficiency, the Association may, at its option, either: (a) enter on and accomplish the maintenance or repair of such portion of the Community that continues to be deficient; (b) contract with another party to accomplish such maintenance or repair; or (c) seek any other remedy available at law or in equity including, without limitation, specific performance or an injunction to enforce the Maintenance Obligations provided herein. Any of the foregoing remedies may be employed at the option of the Association, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

7.2.5 Emergency Maintenance. If the Association determines that a maintenance deficiency constitutes an Emergency which requires action prior to the expiration of any cure period, the Association may take the actions provided for in this Section without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the Emergency action the Association gives a Notice of Deficiency (without providing a cure period) to the Owner.

7.2.6 Reimbursement of Association. If the Association elects to perform a Maintenance Obligation of an Owner under this Section, the entire cost of accomplishing such Maintenance Obligation shall be an obligation of the applicable Owner and shall be reimbursed by the Owner to the Association with interest at the Applicable Rate and the Association may allocate such costs as part of the Common Expenses solely to the Owner and include such additional costs in the portion of the Regular Assessments payable by the Owners or levy a Compliance Assessment with respect thereto.

7.3 Maintenance Obligations of Association. The Association is responsible for the care and maintenance of the Association Maintenance Areas and those components of the Community designated for maintenance by the Association on the Maintenance Responsibility Chart. All costs incurred by the Association in performing the Maintenance Obligations shall be paid for as Common Expenses. The Association shall keep such portions of the Community in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas in accordance with the Maintenance Obligations. Such maintenance shall include, but not be limited to:

7.3.1 Roof Drains. The Association shall clean and clear all roof drains of debris and obstructions at least two (2) times per calendar year. Such maintenance shall be performed in accordance with the requirements of the Storm Water Agreement and all Applicable Laws.

7.3.2 Storm Water Planter Areas. The Association shall maintain, repair, and replace the Storm Water Planter Areas. Such maintenance shall be performed in accordance with the requirements of the Storm Water Agreement and all Applicable Laws.

7.3.3 Anti-Graffiti Film. The Association shall be responsible for the replacement of the anti-graffiti film on the exterior glass portions of the Commercial Units, unless damage to the anti-graffiti film is caused by the Commercial Owner or a lack of maintenance by the Commercial Owner.

7.3.4 Additional Items. The Association shall also be responsible for maintaining any Improvements that a Majority of the Board or a Majority of the Voting Power of the Association designates for maintenance by the Association.

7.4 Manner of Maintenance.

7.4.1 Quality of Maintenance. All maintenance work required to be undertaken by the Association or Owners hereunder shall be performed in a first class and workmanlike manner in accordance with good maintenance practices and in compliance with all Applicable Laws and the Maintenance Obligations. Any such work shall be performed to the extent reasonably practicable, to

minimize any noise, vibration, particulates and dust infiltration or other disturbances which would unreasonably disturb Owners or Occupants.

7.4.2 Duty to Protect Against Mechanics' Liens. In performing the Maintenance Obligations, the Association and the Owners (for the purposes of this Section, "**Contracting Party**", as applicable) shall each promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Community or the construction of any Improvements authorized or undertaken by the Contracting Party. The Contracting Party shall not cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been any furnished or delivered to the Community or any Condominium by the Contracting Party. If any Contracting Party causes a lien to be filed, such party shall: (a) immediately either cause the lien to be discharged within ten (10) days after notice to such responsible party by the Association or Owners or post a bond which protects the title of the affected Owner to their Condominium; (b) indemnify, protect, defend and hold harmless the other Owners and/or the Association, as applicable, from any loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Community or the other Owners or such Owner's Condominium for such work or services performed or materials supplied by any architect, engineer or contractor with whom the Contracting Party has contracted or any other Person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (c) pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims by another Owner and any costs of enforcing this indemnity.

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

7.6 Inspection of the Community. The Association shall regularly inspect the Association Maintenance Areas, including without limitation, the landscaping, drainage and irrigation systems serving or within such areas. The Association shall also comply with the requirements, including the inspection requirements set forth in the Association Maintenance Manual or any Governmental Entitlements. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing such inspections and follow any recommendations contained in the Association Maintenance Manual. The Association may, from time to time, make appropriate revisions to the Association Maintenance Manual, if any, based upon the Board's review of the Association Maintenance Manual, to update such Association Maintenance Manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. The inspections required to be conducted by the Association under this Article shall take place as required under the Association Maintenance Manual. The inspectors shall provide written reports of their inspections to the Association and, if requested by Declarant, to Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems located within the Association Maintenance Areas. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Board shall promptly cause all matters identified as requiring attention to be

maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspection require the inspection of any Residential Unit, there is hereby created a non-exclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days' advance notice to the Owner, except in case of Emergency. Any damage to any structure, landscaping or other Improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

7.7 Future Construction. Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Association Property and to Condominiums owned by Declarant.

ARTICLE 8 ARCHITECTURAL REVIEW

8.1 Non-Applicability to Declarant. The provisions of this Article shall not apply to any Improvements installed by Declarant, and neither the Board nor the Architectural Committee shall have any rights of review or approval with respect thereto.

8.2 Amendments. Notwithstanding the provisions of **ARTICLE 14**, no amendment to or rescission of this Article shall be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Community prior to the conveyance by Declarant, or its successor, of the last Condominium to a First Purchaser without (a) the written consent of Declarant, so long as Declarant or a Declarant Party owns any portion of the Property, and (b) the recording of such consent in the Official Records.

8.3 Scope of Architectural Review. No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Unit or Exclusive Use Area until complete plans and specifications showing the nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines ("**Plans and Specifications**"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of any Unit or any portion thereof shall not be altered without the prior written consent of the Board. An Owner shall also be obligated to obtain any approvals required by any Governmental Agencies.

8.4 Architectural Guidelines. The Board may, from time to time and in accordance with Civil Code Section 4355, *et seq.*, adopt, amend and repeal, by Majority vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Guidelines shall not be in derogation of the standards required by this Declaration. The Architectural Guidelines shall be in compliance with all Applicable Laws including, without limitation, California Civil Code Sections 4720 and 4735.

8.5 Commercial Improvements.

8.5.1 Scope of Review. Notwithstanding anything to the contrary set forth in this Declaration, the scope of the Board's review of Plans and Specifications of any Improvements within a Commercial Unit shall be limited to compliance with the Architectural Guidelines. Improvements to the interior of a Commercial Condominium that do not affect Association Property do not require prior Board approval. Board Approval shall be required only in connection with Improvements that affect Association Property, including improvements in the interior of a Commercial Condominium that affect Association

Property. In addition, in no event shall the Board deny approval for any work proposed by a Commercial Owner that is reasonably necessary to use such Commercial Condominium in accordance with the provisions of this Declaration, provided that such work does not (a) impair the structural integrity of the Condominium Building, (b) affect an Owner's Unit, Assigned Parking Space or Assigned Bicycle Parking Space and (c) materially and adversely affect the aesthetic quality of the exterior of the Community.

8.5.2 Approval. Prior to the installation of any Improvements requiring review under **Section 8.5.1** (Scope of Review) and prior to obtaining approval for the Improvements from the City or other Governmental Agencies, if required, the Commercial Owner shall submit to the Board a complete set of Plans and Specifications and any review fee required pursuant to the Architectural Guidelines, including evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Architectural Guidelines, and comply with all Applicable Laws ("**Preliminary Application**"). If the Board approves such Preliminary Application and the Commercial Owner then obtains approval from the appropriate Governmental Agencies for the Improvements, the Commercial Owner shall then submit to the Board the complete set of Plans and Specifications approved by the Governmental Agencies and any fee required pursuant to the Architectural Guidelines ("**Final Application**").

8.5.3 Time Periods for Review. Within forty-five (45) days after a Commercial Owner's proper Preliminary Application for approval, the Board shall consider and act upon such request. The Board shall endeavor to approve or disapprove the Preliminary Application within thirty (30) days of the Commercial Owner's submittal for approval of a proper Preliminary Application, but in the event the Board fails to approve or disapprove the Preliminary Application within forty-five (45) days after all document fees and information requested by the Board have been received by it, the Commercial Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such plans within fifteen (15) days after the receipt of the Preliminary Application, then the Preliminary Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures within the Community. In granting or denying approval, the Board may give the Commercial Owner such directions concerning the form and substance of the Final Application for approval as it may deem proper or desirable for the guidance of the Owner. Once the Commercial Owner obtains approval of the Preliminary Application from the Board, the Commercial may submit the Plans and Specifications to the appropriate Governmental Agencies for approval (if required). The Commercial Owner shall submit the Final Application to the Board within fifteen (15) days of receiving approval for the Plans and Specifications from the appropriate Governmental Agencies. The Board shall endeavor to approve or disapprove the Preliminary Application within fifteen (15) days of the Commercial Owner's submittal for approval of a proper Final Application. If the Board fails to approve or disapprove any such plans within fifteen (15) days after the receipt of the Final Application, then the Final Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures within the Community.

8.6 Residential Improvements.

8.6.1 Approval. Prior to the installation of any Improvements, the Residential Owner shall submit to the Board a complete set of Plans and Specifications and any review fee required pursuant to the Architectural Guidelines, including evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Architectural Guidelines, and comply with all Applicable Laws ("**Application**").

8.6.2 Time Periods for Review. Within forty-five (45) days after the Residential Owner's proper Application for approval, the Board shall consider and act upon such request. The Board shall endeavor to approve or disapprove the Application within thirty (30) days of the Residential Owner's submittal for approval of a proper Application form, but in the event the Board fails to approve or disapprove the Application within forty-five (45) days after all document fees and information requested by the Board have been received by it, the Residential Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any

such plans within fifteen (15) days after the receipt of the Application, then the Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures within the Community. In granting or denying approval, the Board may give the Residential Owner such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Residential Owner.

8.7 Effectiveness of Final Approval. The approval shall be effective for twelve (12) months from the date of issuance. In the event construction does not commence within such twelve (12) month period, the approval shall be deemed to have expired and a new approval pursuant to the provisions of this **ARTICLE 8** must be obtained.

8.8 Approval of Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in California Civil Code Section 801.5 shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

8.9 Approval of Modifications to Accommodate Disabled Owners. Any Owner proposing to install Improvements or make modifications to such Owner's Residential Unit or the Association Property leading to such Owner's Residential Unit to facilitate access for persons who are blind, visually handicapped, deaf or otherwise disabled, or to other conditions which could be hazardous to such persons shall be subject to the same review and approval requirements as any Owner proposing to construct Improvements or other actions requiring approval of the Board pursuant to this Declaration; provided, however, that the Board shall not deny approval of the proposed modifications without good cause.

8.10 Compliance With California Civil Code Section 4765. In approving Plans and Specifications submitted to it pursuant to this **ARTICLE 8**, the Association shall comply with the requirements of California Civil Code Section 4765.

8.11 Inspection and Correction of Work. Inspection of work and correction of deficiencies therein shall proceed as set forth below.

8.11.1 Right of Inspection During Course of Construction. The Board or its duly authorized representative may enter into any Unit, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting the construction and/or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such noncompliance. The Board may not enter into a Unit without obtaining the prior permission of the Occupant; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry during daylight hours within forty-eight (48) hours of the request for entry.

8.11.2 Notice of Completion. Upon the completion of any Improvements for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Board.

8.11.3 Inspection. Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Unit, as provided in **Section 8.11.1**, to inspect such Improvements to determine whether they were constructed, reconstructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such

thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

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

8.11.5 Failure to Notify. If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

8.12 Government Regulations. If there is any conflict between the requirements or actions of the Board and the Applicable Laws to the extent that such Applicable Laws are more restrictive, the Applicable Laws shall control, and the Board shall modify its requirements or actions to conform to the Applicable Laws; provided, however, that if the Applicable Laws are less restrictive the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other Applicable Laws or public utility requirements (hereinafter collectively referred to as "**Additional Requirements**") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of the Governing Documents, the provisions of the Governing Documents shall nonetheless apply.

8.13 Diligence in Construction. Upon approval by the Association of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

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

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

8.16 Appeal. If an Architectural Committee is appointed and it disapproves any application, the Applicant may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure

of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant. The decision of the Board shall be binding and final.

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

8.18 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall issue an estoppel certificate, approved by a Majority of its Members and executed by two (2) officers of the Board, stating (with respect to any Unit of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such Persons deriving any interest through them.

8.19 Liability. Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Community or any property within the Community; or (d) the execution and filing of an estoppel certificate pursuant to **Section 8.188** whether or not the facts therein are correct, provided, however, that such Board or Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board or Architectural Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board or Architectural Committee, as the case may be.

8.20 Variances. The Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) officers of the Board and shall become effective upon execution. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all Applicable Laws affecting its use of the Unit.

8.21 Appointment of Architectural Committee. The Board shall have the right to delegate its review and approval rights under this **ARTICLE 8** to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of a minimum of three (3) members and a maximum of five (5) members. One (1) alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee. In addition to the foregoing, the Board and/or the Architectural Committee shall have the right, but not the obligation, to assign a professional within the architecture field to work in conjunction with the Architectural Committee and/or Board in the approval of Plans and Specifications. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee. If an Architectural Committee is

appointed, the right to appoint and remove all Architectural Committee members and alternate members of the Architectural Committee shall be, and is hereby, vested solely in Declarant, unless Declarant waives its rights hereunder by notice in writing to the Association, until the earlier to occur of (a) such time as the Owners, other than Declarant, own ninety percent (90%) or more of the Condominiums or (b) the fifth (5th) anniversary of the original issuance of the Public Report for the Property, after which the Board may appoint and remove all members of the Design Review Committee; provided, however, that after one (1) year from the issuance of the Public Report, a Majority of the Board shall have the right to appoint one (1) member to the Architectural Committee. Members of the Architectural Committee appointed by the Board shall be Members of the Association (other than a design professional, if any). Members appointed to the Architectural Committee by Declarant need not be Members of the Association. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the minutes of the Association of each new Architectural Committee member or alternate member appointed and each member or alternate replaced or removed from the Architectural Committee.

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

ARTICLE 9 DEVELOPMENT RIGHTS

9.1 Limitations of Restrictions. Declarant is undertaking the work of developing Condominiums and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums are essential to the establishment and marketing of the Property as a first-class condominium community. In order that the work may be completed and the Community be established as a fully occupied condominium community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

9.2 Rights of Access and Completion of Construction. Until the third (3rd) anniversary of the original issuance of a Public Report, Declarant, its contractors and subcontractors shall have the rights set forth below, which rights shall be exercised in such a manner as reasonable to minimize interference with the conduct of any business in a Commercial Condominium.

9.2.1 Access. Declarant, its agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property or to do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Community and the development, marketing and maintenance thereof, and Declarant and its contractors and subcontractors shall have such rights of access over and across the Association Property for purposes of satisfying any obligation of Declarant that Declarant has secured by a bond in favor of any Governmental Agency.

9.2.2 Construct Improvements. Declarant, its agents, contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Unit owned by it such structures or Improvements, including, without limitation, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Community as a mixed use community and dispose of interests in the Community by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work or Improvements required for Declarant to obtain a release of any bonds posted by Declarant in favor of any Governmental Agency.

9.2.3 Grant Easements. Declarant, its agents, contractors and subcontractors shall have the right to establish and/or grant on, over, under and across the Association Property such

easements and rights of way for the benefit of any Governmental Agency, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (a) roads, streets, walks and driveways; (b) poles, wires and any necessary attachments for transmission of electricity, providing telephone service and cable television service to the Community; and (c) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all related equipment. The Association Property shall be subject to any dedication stated in the Condominium Plan or on the Final Map of an easement for public use for installation, maintenance and operation of facilities for public utilities over the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County and the State and shall include the right of ingress and egress over the Association Property by vehicles of any Governmental Agency and such utility companies to properly install, maintain, repair, replace and otherwise service such Utility Facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or any Governmental Agency for maintenance or operation of any of the Association Property or facilities located thereon or the repair, replacement or reconstruction thereof except for those Improvements owned by the utility companies or a Governmental Agency, and except as occasioned by the negligence or willful misconduct of the utility companies or Governmental Agency of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City and County furthermore are granted a non-exclusive easement across the Association Property for ingress and egress for use by Emergency vehicles of the City or County.

9.2.4 Use of Facilities. Declarant shall have the right to reasonably use any Association Property for promotional and other marketing activities and Declarant shall have the right to reasonably display or show any Residential Facilities to prospective purchasers.

9.3 Size and Appearance of Community. Declarant shall not be prevented from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Community in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law. The nature, design, quality and quantity of all Improvements to the Association Maintenance Areas shall be determined by Declarant, in its sole discretion.

9.4 Marketing Rights.

9.4.1 General Rights. Subject to the limitations of this Declaration, Declarant shall have the right to: (a) maintain model homes, sales offices, customer service offices, storage areas and related facilities in any unsold Condominiums or Association Property as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Condominiums; (b) make reasonable use of the Association Property and facilities for the sale of Condominiums; (c) post signs, flags, banners, billboards, balloons and other advertising and promotional devices which Declarant may, in its sole discretion, deem appropriate in connection with its marketing and/or development of any portions of the Community; and (d) conduct its business of disposing of Condominiums by sale, lease or otherwise.

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

9.5 Title Rights. The rights of Declarant may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to Governmental Agencies, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

9.6 Power of Attorney. Each Owner, by accepting a deed to a Condominium, shall be deemed to have irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Property, as its Attorney-in-Fact, for itself and each of its Mortgagees, optionees, grantees, licensees, trustees, receivers, Lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as its Attorney-in-Fact to prepare, execute, acknowledge and record any Condominium Plan or amendment to the Condominium Plan for all or any portion of the Property. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

9.7 Amendment. The provisions of this Article may not be amended without the consent of Declarant until all of the Condominiums owned by Declarant have been conveyed.

9.8 Supplementary Condominium Plans and Supplementary Declarations. So long as Declarant or a Declarant Party owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by Declarant, without the consent of any Owner, for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded. After Declarant no longer owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by the Association for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded.

9.9 No Representation Regarding Security. The Community entry facilities are not intended to provide, and should not be construed as providing, guard or security services to any person or property within the Community. Declarant does not provide or attempt to provide security within the Community and does not make any representations or warranties whatsoever as to the adequacy of the Community entry facilities in providing privacy or limiting access into the Community.

ARTICLE 10 INSURANCE

10.1 Association's Insurance Obligations.

10.1.1 Liability Insurance. The Association shall obtain and maintain liability insurance providing coverage at least as broad as a current Insurance Services Office, Inc. ("ISO") commercial general liability insurance form or its equivalent (including coverage for medical payments and coverage for owned and non-owned automobiles, if applicable), insuring the Association, Declarant (as long as Declarant or a Declarant Party is the Owner of any Condominium and/or has any rights under this **ARTICLE 10**) and the Owners against liability arising from the ownership, operation, maintenance and use of the Association Property and Association Maintenance Areas by the Association and the performance by the Association of its duties under this Declaration. Such coverage shall also include legal liability arising out of lawsuits related to employment contracts of the Association, if any. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5805. Such insurance shall include coverage against water damage liability, a broad form named insured endorsement, if reasonably available as determined by the Board, and may include coverage against any other liability

customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Board. Such policy shall include, if reasonably available as determined by the Board, a cross-liability or severability or interest endorsement insuring each insured against liability to each other insured.

10.1.2 Property Insurance. The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring (a) all Association Property, including fixtures and building service equipment, and (b) all personal property owned or maintained by the Association (collectively, "**Association Insured Property**"). The property insurance maintained by the Association shall also cover any portions of the Units not required to be insured by the Owners pursuant to **Section 10.2.1**, including without limitation, the following items and components installed by Declarant within Units at the time of original construction of the Units (and any equivalent replacements thereof): fixtures, interior walls and doors, ceiling, floor and wall surface materials (e.g. paint, wallpaper, mirrors, carpets, and hardwood floors); cabinets, built-in appliances; heating and air conditioning systems, and water heaters. Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property, as determined annually by the Board. Such coverage may exclude land, foundations, excavations, and other items typically excluded from property insurance coverage on properties similar in construction, location and use.

(a) **Course of Construction.** Whenever any Improvements or alterations to the Association Insured Property are in the course of construction, the insurance required under this Section shall be carried by the Association in builder's risk form written on a completed value basis, insuring against loss to the extent of at least the full replacement value of the Association Insured Property (excluding foundations and footings, except for earthquake coverage) of the Property being covered.

(b) **Payment of Insurance Proceeds.** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Association or an insurance trustee ("**Trustee**") to be held in trust for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the County that agrees in writing to accept such trust.

(c) **Earthquake Insurance.** **ALL PARTIES ACKNOWLEDGE THAT EARTHQUAKE INSURANCE IS NOT INCLUDED IN THE BUDGET AND IS NOT BEING OBTAINED BY DECLARANT FOR THE BENEFIT OF THE OWNERS OR THE ASSOCIATION. NEITHER DECLARANT NOR THE ASSOCIATION IS OBLIGATED TO MAINTAIN EARTHQUAKE INSURANCE ON THE ASSOCIATION PROPERTY OR ANY PORTION THEREOF.** Declarant or any Owner (and/or their respective lenders) may maintain earthquake insurance for their own benefit, but the premiums therefor may not be included by Declarant or the Association as Common Expenses. Notwithstanding the foregoing, at such time as the Board is no longer controlled by Declarant, the Association may, in its discretion, (but without any obligation to do so) obtain earthquake insurance from time to time, on those portions of the Community that are to be insured by the Association as provided in this Declaration, and if so obtained, the premiums for such insurance may be included in the Common Expenses. All parties acknowledge that earthquake insurance is typically very expensive and if purchased by the Association a material increase in Assessments may be required to cover the additional cost of such insurance.

(d) **Primary.** With respect to Association Insured Property, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(e) **Endorsements.** The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, pollution claims including mold, and such other

endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(f) **Adjustment of Losses.** The Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Association. The Board is appointed attorney-in-fact by each Owner (except for the Secretary, U.S. Department of Veterans Affairs), to negotiate and agree on the value and extent of any property damage under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Association or enforce any such claim by legal action or otherwise and to execute releases in favor of any insurer with respect to any such claim.

(g) **Waiver of Claims and Subrogation.** The Association waives all claims against the Owners for any damage to the Association Insured Property (including without limitation, any loss of use of such property), except that the Association may claim against an Owner for property damage caused by that Owner to the extent that: (a) the peril causing such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or the property insurance actually maintained by the Association (whichever is greater), provided that such Owner's liability for such uninsured damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; (b) the peril causing such damage is covered by the Association's property insurance, but the damage is within the amount of the deductible or self-insured retention, provided that such Owner's liability for such damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; or (c) such damage is caused by the gross negligence or willful misconduct of that Owner. Any property insurance policy obtained by the Association must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of the Association to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Association and the Owners as set forth herein. If an Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy a Compliance Assessment equal to the amount of damage for which the Owner is responsible, and the increase, if any, in insurance premiums directly attributable to such damage.

The waivers of claims and subrogation set forth in this Subsection apply only in favor of the Owners and do not limit or waive, release or discharge any claims that the Association (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, or Invitee, provided that such waivers shall also apply in favor of a Lessee if and to the extent that the Owner has similarly agreed in such lease agreement to a waiver of claims and subrogation against such Lessee.

(h) **Loss Assessment.** Each Owner shall obtain and maintain loss assessment insurance coverage in the minimum amount of Twenty-Five Thousand Dollars (\$25,000) to cover Special Assessments levied as a result of property damage to the Association Property or liability arising from the Association Property.

10.1.3 Fidelity Bond. The Association shall maintain a fidelity bond in an amount equal to the greater of (a) the estimated maximum amount of funds, including reserves, expected to be regularly held by or on behalf of the Association or a managing agent at any given time during the term of the fidelity bond and (b) three (3) months' aggregate of the Regular Assessments on all Units plus any reserve funds. The bonds shall name the Association as obligee and shall insure against loss by reason of the acts of the employees of the Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

10.1.4 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all Applicable Laws.

10.1.5 Directors and Officers Insurance. The Association shall maintain a policy insuring the Association's officers and directors against liability for their acts or omissions while acting in

their capacity as officers and directors of the Association. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5800.

10.1.6 General Policy Requirements. All insurance policies the Association is required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "A/VIII" by A.M. Best Company, Inc. and otherwise reasonably satisfactory to the Association. If an A.M. Best Company, Inc. rating is not available, a comparable rating service may be used. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Board. For projects approved by FNMA, the maximum deductible may not exceed the maximum deductible, if any, established by FNMA. For projects approved by FNMA and FHA, the insurance may not be prejudiced by any acts, negligence or omissions of Owners which is not in the control of such Owners collectively. The coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article. The name of the insured under such policy must be set forth therein substantially as follows: "Elevant Owners Association for use and benefit of the individual homeowners".

10.1.7 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and available for inspection by Owners and First Mortgagees at reasonable times. All such insurance policies and fidelity bonds shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior notice in writing to the Association, Owners and First Mortgagees (and in the case of any FNMA Mortgage, the servicer of such Mortgage), except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Association shall provide to the Owners such information regarding the insurance of the Association as may be required by Applicable Laws or under the Bylaws.

10.1.8 Compliance With Federal Regulations. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements for condominium projects established by Federal Agencies, so long as any of the above is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the Federal Agencies as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

10.1.9 Allocation of Premiums Between Commercial and Residential Owners. The Association may provide the coverage described in this Article under one or more policies of insurance. If any components of the Association insurance for the Commercial Units are priced separately from the residential portion of the Community, then the Commercial Owners shall pay for the commercial portion as a Commercial expense ("**Commercial Expense**") and the Residential Owners shall pay for the residential portion as a residential expense ("**Residential Expense**"). If any Association insurance is issued as a single policy covering the commercial and the residential portions of the Community, the Board shall allocate the cost of such insurance between the Commercial Owners and the Residential Owners as a Shared Variable Expense in accordance with **Exhibit "C"**.

10.2 Owners' Insurance Obligations. Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding (a) the amount of property insurance the Owner should procure for casualty losses to property not covered under the Association's property insurance policy; and (b) the amount of personal liability insurance coverage the Owner should maintain. Each Owner shall provide the Association with complete copies of the insurance policies required pursuant to this **Section 10.2** prior to the date of close of escrow of such Owner's Unit.

10.2.1 Property Insurance.

(a) **Residential Owner Insured Property.** Each Residential Owner shall obtain and maintain at its sole expense property insurance for the risks covered by, and providing

coverage at least as broad as a current ISO form residential condominium homeowner's insurance policy or its equivalent containing the broadest coverage provisions typically available in such a policy, insuring (i) all personal property located within the Owner's Unit or Exclusive Use Areas including without limitation any property of others under the care, custody, or control of Owner, except the Association's property); and (ii) any upgrades or Improvements which are not Association Insured Property and which are located within the Unit or Exclusive Use Areas (including landscaping Improvements) (collectively referred to as "**Residential Owner's Property**") for an amount equal to the maximum insurable replacement value thereof. Each Residential Owner is responsible to obtain at its sole cost and expense insurance for any personal property of such Residential Owner in such amounts as may be deemed adequate by such Residential Owner.

(b) **Commercial Owners.** Each Commercial Owner shall obtain and maintain or cause to be obtained and maintained at its sole expense property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO form Condominium Commercial Unit Owners Insurance policy or its equivalent, insuring (i) all personal property located within the Commercial Owner's Unit including without limitation any property of others under the care, custody, or control of Commercial Owner, except the Association's property); and (ii) any upgrades or improvements which are not Association Insured Property and which are located within the Unit (including tenant improvements) (collectively referred to as "**Commercial Owner Insured Property**") for an amount equal to the maximum insurable replacement value thereof. Each Commercial Owner is hereby advised that if they elect to obtain loss of use or business interruption insurance, such insurance shall be obtained at the sole cost and expense of the Commercial Owner, and shall not be the responsibility of the Association.

(c) **Waiver of Claims and Subrogation.** Each Owner waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association set forth herein.

The waivers of claims and subrogation set forth in this Subsection apply only in favor of the Association and do not limit or waive, release or discharge any claims that an Owner (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, other Owner, or Invitee; provided, that such waivers shall also apply in favor of the Association's managing agent if and to the extent that the Association has similarly agreed in a written management agreement to a waiver of claims and subrogation against such managing agent.

10.2.2 Liability Insurance.

(a) **Residential Owners.** Each Residential Owner shall, at such Owner's sole cost and expense, maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Residential Owner against liability arising from the ownership, operation, maintenance and use of the Residential Condominium by such Residential Owner. Such policies of insurance shall be written in companies reasonably satisfactory to the Association and may be part of a Residential Owner's insurance policy. Liability insurance maintained by Residential Owners shall have limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate.

(b) **Commercial Owners.** Each Commercial Owner shall, at such Owner's sole cost and expense, maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Commercial Owner against liability arising from the ownership, operation,

maintenance and use of its Condominium. Such policies of insurance shall be written by companies reasonably satisfactory to the Association. Liability insurance maintained by a Commercial Owner shall have limits of liability equal to or greater than the liability insurance customarily carried by Owners of commercial space which are comparable in size, location and quality to the Community, but not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate and shall include so-called "Dram Shop" or liquor liability coverage if the Condominium is used for serving or dispensing alcoholic beverages).

10.2.3 Automobile Insurance. Each Owner who has been assigned a Parking Space shall obtain and maintain at its sole expense insurance for the risks covered by, and providing coverage at least as broad as, a current ISO form automobile insurance policy or its equivalent containing the broadest coverage provisions typically available in such a policy, insuring against damage to all vehicles owned or operated by such Owner as well as liability for bodily injury and property damage caused to others arising from such operation, including coverage for owned, hired and non-owned automobiles, with liability limits of not less than One Hundred Thousand Dollars (\$100,000) combined single limit each accident for Bodily Injury and Property Damage combined. The Association shall have no liability for any loss or damage caused by the Association to any vehicle located upon or around the Community except to the extent caused by the gross negligence or willful misconduct of the Association or its managing agent.

10.2.4 Provisions Applicable to Owners' Insurance Requirements.

(a) **Copies of Policies.** The Association shall have the right but not the obligation to request copies of any insurance policy, which an Owner is required to maintain pursuant to the Declaration, and/or a certificate of such insurance, and in such case, the Owner shall deliver a copy or certificate, as applicable, to the Association within fifteen (15) days upon request. All policies shall indicate they may not be canceled or modified without thirty (30) days prior written notice to the Association, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. The acceptance of a copy of an insurance policy by the Association from an Owner shall not constitute a waiver of any of the insurance requirements set forth herein.

(b) **General Policy Requirements.** All insurance policies the Owners are required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "B/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. The coverage types and amounts required for such insurance may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article, including without limitation condominium unit owners' policy forms that provide both property damage and liability insurance coverage under one policy.

10.3 Review of Insurance. The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year. The review shall include a reasonable determination of the replacement cost of all Association Insured Property without respect to depreciation.

10.4 Board's Authority to Revise Insurance Requirements. Subject to any statutory insurance requirements, the Board shall have the power and right to adjust and modify the insurance requirements for Owners and the Association set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent owners and associations of projects similar in construction, location and use. If the Board elects to materially reduce the coverage required to be maintained by the Association from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association and its directors and officers, and the Owners shall have no liability to each other or to any Mortgagee and shall not be in breach of their obligations hereunder if after a good faith effort, the Association is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole

discretion, determines is unreasonable under the circumstances, or in the case of insurance required to be maintained by the Association, if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

11.1 Restoration Defined. As used in this **ARTICLE 11**, the term “restore” or “restoration” shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

11.2 Restoration Proceeds for Association Property.

11.2.1 Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to restore the damaged Improvements, and if such claims are not waived, the Association shall determine whether to levy a Compliance Assessment against any Owner or Owners who caused such damage in accordance with **Section 10.1.2(g)**. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

11.2.2 Insufficient Proceeds. If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment, pursuant to **subsection (a)** below, and second to use a plan of alternative reconstruction pursuant to **subsection (b)** below. If the Members do not approve such actions, then the Condominium Building shall be sold pursuant to **subsection (c)** below.

(a) **Additional Special Assessment.** If the total funds available to restore the damaged Improvement as provided in **Section 11.2.1** are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency (“**Additional Special Assessment**”). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 11.2.1**, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **subsection (b)**.

(b) **Alternative Reconstruction.** The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 11.2.1** and **subsection (a)** above (“**Alternative Reconstruction**”). All proposals shall be presented to the Owners. If two-thirds (2/3) of the Voting Power of the Owners whose Residential Units were materially damaged, as determined by the Association (“**Affected Owners**”) and a Majority of the Voting Power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **subsection (c)** shall apply.

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

(i) Members holding at least sixty-seven percent (67%) of the total Voting Power (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

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

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

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and to remove and appropriately landscape the remaining area. For this purpose, no Condominium that is being purchased shall be subject to any Assessment intended to be used as a source of such funds.

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

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

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

11.4 Authority to Effect Changes. If any adjacent Units or portion thereof are damaged or destroyed or in need of renovation or rehabilitation and the Units are repaired or reconstructed pursuant to the provisions set forth herein, the Unit may be repaired or reconstructed in a manner that alters the boundaries of such Units or the adjacent Association Property provided the following conditions are satisfied.

(a) the alteration has been approved by the Board, by the holders of any First Mortgages to the extent required herein and the Owners of the affected Units;

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

(c) the alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Unit Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than 10% from the square footage as shown on the Condominium Plan;

(d) the Board has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and Occupants to use and enjoy the Association Property;

(e) the Condominium Plan is amended to reflect the alteration to the Units or Association Property; and

(f) easements for any encroachments created by such alterations are granted to the affected Owners by the Association.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Association Property as authorized above, including, without limitation, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

11.5 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000). The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable and determine whether to levy a Compliance Assessment against any Owner who caused the damage pursuant to **Section 10.1.2(g)**, such Assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.6 Damage or Destruction to a Unit. In the event of damage or destruction to any Unit, the Owner thereof shall (unless the Association is not required to repair surrounding damaged Association Property pursuant to the terms set forth above) reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved. The Owner shall be entitled to the benefit of any master policy of property insurance maintained by the Association to the extent it covers the damage or destruction of elements of the Condominium that are within the Unit and which are the obligation of the Owner to repair as provided in this Declaration. With the exception of any casualty or damage insured against by the

Association pursuant to **Section 10.1**, restoration and repair of any 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, provided however, that nothing contained in this Section shall be construed as a waiver of claims that the Owner of a damaged Unit may have against another Owner who caused the damage. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this **ARTICLE 11**, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with Plans and Specifications approved in accordance with **ARTICLE 8**.

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

11.8 Condemnation of a Unit. In the event of any taking of a Condominium, the Owner (and such Owner's Mortgagees as their interests may appear) of the Condominium shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Condominium and membership in the Association if such Owner shall vacate such Owner's Unit as a result of such taking. In such event said Owner shall grant its remaining interest in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

ARTICLE 12 PARTITION AND SEVERABILITY OF INTERESTS

12.1 Suspension. The right of partition is suspended pursuant to California Civil Code Section 4610 as to the Community. Nothing in this Article shall be deemed to prohibit partition of a co-tenancy in a Condominium.

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

12.2.1 With the approval, after substantial destruction or condemnation of the Community occurs, of at least sixty-seven percent (67%) of the total Voting Power and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

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

12.2.3 As allowed by California law, including California Civil Code Section 4610, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within sixty (60) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested. For so long as is required by FNMA's legal requirements for project acceptance, all references to "Eligible Holder" in this **Section 12.2** shall be deemed to include all First Mortgagees.

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

12.4 Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Community, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Community may be had under California Civil Code Section 4610. The power of attorney shall:

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

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

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

12.5 Prohibition Against Severance. An Owner shall not be entitled to sever such Owner's Unit from its membership in the Association, and shall not be entitled to sever such Owner's Unit and such Owner's membership from such Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Unit over the Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 4625, *et seq.* Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in **Section 12.2** in which the right to partition the Community is suspended thereunder.

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

ARTICLE 13 RIGHTS OF MORTGAGEES

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

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

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

13.4 Notice to Mortgagees. A Mortgagee and guarantor of a Mortgage on a Condominium within the Community are entitled to timely written notice of the following events: (a) any condemnation loss or casualty loss that affects either a material portion of the Community or the Condominium on which the Mortgagee holds a Mortgage; (b) any delinquency in the payment of Assessments or charges owed by the Owner that is subject to a Mortgage held by the Mortgagee if the delinquency is not cured within sixty (60) days after its due date; (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (d) any proposal to take any action specified in this Article or **Article 11** (Destruction of Improvements and Condemnation), provided that, for purposes of a proposal to terminate the Community and/or dissolve the Association, "timely written notice" shall mean at least thirty (30) days' advance written notice; (e) any default by the Owner-Mortgagor of a Condominium subject to a Mortgage held by the Mortgagee in the performance of its obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or (f) any proposed action that requires the consent of a specified percentage of the Mortgagees.

13.5 Reserve Fund. The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of Association Property, Association Maintenance Areas and any other property that the Association is obligated to maintain and any cost sharing obligations. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of Assessment or charge authorized by this Declaration.

13.6 Inspection of Books and Records. Upon request, any Owner, Declarant, prospective purchaser or Eligible Holder shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto, during normal business hours or under other reasonable circumstances.

13.7 Financial Statements. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Association's Fiscal Year-end to any current or prospective Institutional Mortgagee or Eligible Holder that has submitted a written request for it.

13.8 Actions Requiring Eligible Holder Approval. Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to: (a) by act or omission, seek to abandon or terminate the Community and/or dissolve the Association; (b) by act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Condominiums and the Owners (provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Association and Owners shall

not be deemed a transfer within the meaning of this Section); (c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Units, the exterior maintenance of Units, or the upkeep of lawns, plantings or other landscaping in the Community; (d) by act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner; (e) partition or subdivide a Condominium; (f) fail to maintain fire and extended coverage insurance on insurable portions of the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and (g) use insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

13.9 Votes for Termination of Community. Any election to terminate the legal status of the Community as a condominium community shall require:

13.9.1 The approval of Mortgagees that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages and at least sixty-seven percent (67%) of the total Voting Power if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Community; or

13.9.2 The approval of at least sixty-seven percent (67%) of the total Voting Power and Mortgagees that represent at least sixty-seven percent (67%) of the votes of Condominiums that are subject to Mortgages, if **Section 13.9.1** is not applicable.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Mortgages" in this Section shall be deemed to include all guarantors of such Mortgagees.

13.10 Condemnation or Destruction. In the event a portion of the Community is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Community unless Eligible Holders representing at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages held by Eligible Holders approve the taking of other action by the Association.

13.11 Self-Management. The vote or approval by written ballot of at least sixty-seven percent (67%) of the total Voting Power and Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders shall be required to assume self-management of the Community if professional management has been required by an Eligible Holder at any time.

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

13.13 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Association Property. Any provision to the contrary in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

13.14 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note

secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

13.15 Foreclosure. If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for Assessments, including Additional Charges, that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments, including interest, costs (including attorneys' fees), and late charges levied by the Association with respect thereto or installments, that have accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued Assessments or other charges may include previously unpaid Assessments provided all Owners, including the foreclosure-purchaser, and its successors and assigns are required to pay their proportionate share as provided in this Section.

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

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

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

13.19 Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

13.20 Right of First Refusal Not Applicable to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any lease, conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed- or assignment-in-lieu of foreclosure.

13.21 Written Notification to Mortgagees or Guarantors of First Mortgages. If a Mortgagee or guarantor of a First Mortgage has not given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the First Mortgage, any written notice or proposal required or permitted by this Declaration to be given to such Mortgagee or guarantor shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee or guarantor at its address appearing of record in the First Mortgage (or assignment thereof, if applicable).

ARTICLE 14 AMENDMENTS

Except as otherwise set forth in this Declaration, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium, without (i) the prior written consent of Declarant and (ii) the recording of said written consent in the Official Records.

14.1 Amendment Before the Close of First Sale. Before the conveyance of the first Condominium to a First Purchaser, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking 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.

14.1.1 Minor Corrections by Declarant. Notwithstanding any other provisions of this Article, Declarant (for so long as Declarant owns any portion of the Property) may unilaterally amend this Declaration or any Supplementary Declaration by recording a written instrument signed by Declarant in order to: (a) conform this Declaration or any Supplementary Declaration to the rules, regulations or requirements of Federal Agencies or other Governmental Entities; (b) amend, replace or substitute any exhibit to correct typographical or engineering errors, (c) include any exhibit that was inadvertently omitted at the time of recording, (d) comply with any City, County, State or Federal laws or regulations; (e) correct typographical errors; (f) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under of California Civil Code Division 2, Part 2, Title 7 (commencing with Section 895) and (g) change any exhibit or portion of an exhibit to conform to as-built conditions.

14.1.2 Minor Corrections by the Board. The Board may amend this Declaration or a Supplementary Declaration by recording a written instrument signed by two (2) officers of the Association certifying that the Board approved the amendment for the purposes described in **Sections 14.1.1 (a), (b), (c), (d), and/or (e)**. However, until the end of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the California Civil Code Division 2, Part 2, Title 7 (commencing with Section 895) (including tolling periods), the Board must obtain the prior written approval of Declarant to any amendment approved by the Board, or any other amendment by the Board or Association that affects the rights of Declarant under the California Civil Code Division 2, Part 2, Title 7 (commencing with Section 895), this Declaration or any Supplementary Declaration, or for any amendment by the Board concerning matters discussed in **Article 9**.

14.2 Amendments After the Close of First Sale. Except as may otherwise be stated in this Declaration, after the conveyance of the first Condominium to a First Purchaser and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of a Majority of the Voting Power of each class of Members has been obtained. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of (a) at least a Majority of the total Voting Power and (b) at least a Majority of the Voting Power of the Members, other than Declarant, has been obtained. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 5100 and the rules adopted by the Board pursuant thereto. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are

hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording with the Office of the County Recorder.

14.3 Approval of Material Amendments. In addition to the requirements of **Section 14.2**, in the case of any Material Amendment, as defined below, the vote of Mortgagees that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages and at least sixty-seven percent (67%) of the Voting Power of each class of Members (or, after conversion of the Class B membership to Class A membership, at least sixty-seven percent (67%) of the total Voting Power of the Association and at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant shall also be required. For purposes of this Section, "**Material Amendment**" shall mean any amendments to provisions of this Declaration governing any of the following subjects: (a) the fundamental purpose for which the Community was created (such as a change from residential use to a different use); (b) assessments, collection of assessments, assessment liens and subordination thereof; (c) the reserves for repair and replacement of the Association Property and Association Maintenance Areas; (d) Maintenance Obligations; (e) casualty and liability insurance or fidelity bond requirements; (f) reconstruction in the event of damage or destruction; (g) rights to use the Association Property; (h) reallocation or conveyance of any interests in the Common Area or Association Property; (i) voting; (j) any provision that, by its terms, is specifically for the benefit of Mortgagees, or specifically confers rights on Mortgagees; (k) expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community; (l) the redefinition of Condominium boundaries or the conversion of a Condominium or Condominiums into Association Property; (m) conversion of a Condominium into Common Area or Association Property or vice versa; (n) imposition of any restriction on any Owner's right to lease, sell or transfer its Condominium; (o) merger or consolidation of the Association; and (p) determination not to require professional management if required pursuant to this Declaration.

Any Mortgagee who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records.

14.4 Additional Approvals.

14.4.1 Governmental Approvals. 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.

14.4.2 Amendment of Certain Provisions. Notwithstanding anything to the contrary contained in this Declaration, **Sections 1.133, 1.63, 1.74, 3.3.17, 3.4.11, 3.4.15, 7.2.3, 7.3, 7.4.1, 15.3** and **15.5** shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the Voting Power other than Declarant, and (b) ninety percent (90%) of the Mortgagees.

14.4.3 Amendment to Eliminate Easements. So long as Declarant owns any portion of the Property, this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect.

14.5 Conflict with ARTICLE 13 or Other Provisions of this Declaration. To the extent any provisions of this Article conflict with the provisions of **ARTICLE 13** or any other provision of this Declaration except those contained in **Section 14.2**, the provisions of **ARTICLE 13** or the other provisions shall control.

14.6 California Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent such section is applicable.

14.7 Reliance on Amendments. Any amendment made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE 15 ENFORCEMENT

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

15.2 Enforcement and Nonwaiver.

15.2.1 Rights of Enforcement of Governing Documents. Subject to **Section 15.5**, the Association, Declarant and any Owner shall have a right of action against any Owner, and Declarant and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to enforce provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 15.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000, *et seq.* relating to such enforcement action.

15.3 Notice of Actions Against Declarant. Subject to the provisions of **Section 15.5** hereof, the Association shall comply with the provisions of California Civil Code Section 6150 and California Civil Code Sections 910 through 938 prior to the filing of any civil action by the Association against Declarant or other developer of the Community for either alleged damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Community that arises out of, or is integrally related to, such damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in California Civil Code Section 6150 and/or California Civil Code Sections 910 through 938, as applicable.

15.4 Notification to Prospective Buyers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice produced by the Association and delivered to the Owners in accordance with California Civil Code Section 6000 and this Declaration.

15.5 Alternative Dispute Resolution. The purpose of this **Section 15.5** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between (a) Owner and/or the Association and (b) Declarant after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property and/or the Fit and Finish Warranty that are not resolved pursuant to any applicable statutory dispute resolution procedures, regardless of when, after the close of escrow, the dispute first arose, and regardless of the legal theory under which the dispute is asserted or the nature of the relief sought (individually referenced to herein as “**Dispute**” and collectively as “**Disputes**”). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 15.5.**

15.5.1 Claim Notice: Right to Inspect and Correct. The party bringing a Dispute (“**Claimant**”) shall notify Declarant in writing of any Dispute. Such writing shall: (a) identify the Claimant; (b) state that the Claimant elects to commence the procedures set forth in this Section; and (c) describe the nature and location of the Dispute in reasonable detail (“**Dispute Notice**”). Within a reasonable period of time after receipt of the Dispute Notice, which period shall not exceed sixty (60) days, the parties shall meet and confer at the Property to discuss the Dispute. At such meeting or at such other mutually-agreeable time, Declarant and its authorized representatives shall have full access to the Property for the purpose of inspecting such Property. If Declarant decides to take corrective action, Declarant and its representatives shall be provided full access to the Property to take such corrective action, provided that the corrective action shall be taken within not less than forty-five (45) days after the meet and confer of the parties referenced above. If the corrective action cannot reasonably be completed within such forty-five (45) day period, the corrective action shall be commenced within the forty-five (45) day period and diligently pursued until complete.

15.5.2 Mediation. Subject to the provisions of **Section 15.5.3(h)**, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all Disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by Declarant. Each party to the mediation shall bear its own attorneys’ fees and costs in connection with such mediation. The mediation shall take place in the County.

15.5.3 Arbitration.

(a) **Agreement to Arbitrate.** The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) **Waiver of Trial by Judge or Jury.** By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All Disputes shall instead be decided by the arbitrator or by the appeal arbitrator(s), if applicable.

(c) **Rules Applicable to All Cases.** The arbitration will be conducted by Judicial Arbitration and Mediation Services (“**JAMS**”) in accordance with the rules of JAMS in effect as of

the initiation of the arbitration ("**JAMS Rules**"), as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years' experience as a practicing lawyer.

(e) **Appointment of Arbitrator.** The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) **Expenses.** All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may, in its discretion and only to the extent permitted by Applicable Laws and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by Declarant.

(g) **Venue.** The venue of the arbitration shall be in the County where the Community is located unless the parties agree in writing to another location.

(h) **Preliminary Procedures.** If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 *et seq.* as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 6000, 6100 or 6150.

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

(j) **Rules of Law.** The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply Applicable Laws relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(k) **Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.

15.5.4 Additional Rules Applicable to Certain Cases. In any arbitration in which a claim of Owner, the Association or Declarant exceeds Two Hundred and Fifty Thousand Dollars (\$250,000) in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) **Qualifications of Arbitrator.** In addition to the requirements of **Section 15.5.3(d)**, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) **Rules of Law.** The California Evidence Code shall apply.

(c) **Written Decision.** Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If any party to the arbitration requests it, the arbitrator must issue a reasoned award.

(d) **Additional Discovery Rights:** In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(i) **Inspection, Examination and/or Test.** The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(ii) **Deposition of Opposing Party.** The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(iii) **Deposition of Expert Witnesses.** The right to take the deposition of each expert witness designated by an opposing party for up to four (4) hours.

(iv) **Additional Depositions.** The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

15.5.5 AGREEMENT TO ARBITRATE. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THEY ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, THE FEDERAL ARBITRATION ACT SHALL CONTROL. DECLARANT, EACH OWNER AND THE ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 15.5. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT.

15.5.6 Procedure for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of Owner or Declarant exceeds Five Hundred Thousand Dollars (\$500,000) in value, Owner and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) **Right of Appeal.** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) **Appellate Panel.** An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) **Issues on Appeal.** The only issues that may be considered on appeal are: (i) the award of money was excessive; (ii) the award of money was insufficient; (iv) the arbitrator awarded non-monetary relief that was inappropriate; and (v) a party who received non-monetary relief should have received other or additional relief. A Majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) **Expenses and Costs on Appeal.** The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by Declarant, except as provided in **Section 15.5.6(b)**. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of their determination award costs of the nature provided in the Federal Rules of Appellate Procedure. If Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in its or their discretion and only to the extent permitted by Applicable Laws and JAMS Minimum Standards of Procedural Fairness, include the non-prevailing party(ies)' pro rata share of the JAMS fee and arbitrator's fee advanced by Declarant in the award of costs on appeal.

(e) **New Evidence.** The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

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

15.5.8 Class Actions Not Available. Notwithstanding any language in this Declaration to the contrary, each Owner, the Association and Declarant acknowledge and agree to arbitrate disputes under the Federal Arbitration Act due to the mutual advantages of arbitration over bringing an action in court to resolve a dispute; however, class action claims are inconsistent with arbitration under the Federal Arbitration Act. Arbitration of a class action destroys the advantages of the arbitration process such as speed, efficiency, and lower costs due to the complexities involved in a class action. FOR THESE REASONS, EACH OWNER, BY ACCEPTANCE OF FEE TITLE TO A UNIT, AND THE ASSOCIATION, BY ACCEPTANCE OF FEE TITLE TO ANY ASSOCIATION PROPERTY OR BY PERFORMANCE OF THE OBLIGATION FOR THE MAINTENANCE OF THE ASSOCIATION PROPERTY, AND DECLARANT MUTUALLY AGREE TO WAIVE THE RIGHT FOR ANY PROCEEDINGS TO RESOLVE A DISPUTE TO BE COMMENCED, HEARD, OR PURSUED AS A CLASS ACTION AND AGREE NOT TO ASSERT ANY CLASS ACTION, ASSOCIATIONAL, OR REPRESENTATIVE ACTION CLAIMS, INCLUDING CLAIMS BY THE ASSOCIATION ON BEHALF OF ANY OWNER, AGAINST THE OTHER IN MEDIATION, COURT, ARBITRATION OR OTHERWISE, AND AGREE THAT IT IS THE EXPRESS INTENT OF EACH PARTY THAT CLASS ACTION AND REPRESENTATIVE ACTION PROCEDURES NOT BE ASSERTED OR APPLIED WITH RESPECT TO ANY DISPUTE. Under no circumstances will a class action be arbitrated.

15.5.9 Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

15.5.10 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this **Section 15.5** is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this **Section 15.5** shall be conducted under the remaining enforceable terms of this **Section 15.5**.

15.5.11 Application of Award. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of **Section 3.4.18** of this Declaration.

ARTICLE 16 GENERAL PROVISIONS

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

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. 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 force and effect to the fullest extent permissible by law.

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

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

16.5 No Racial Restriction. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of its Condominium on the basis of race, sex, color or creed.

16.6 Access to Books. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

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

16.8 Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to its transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified. Notices shall also be deemed received on the next business day

after being sent by overnight courier or upon delivery if delivered personally to any Occupant over the age of twelve (12) years.

16.9 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

16.10 Exhibits. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

16.11 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

16.12 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

16.13 Statutory References. All references in this Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and any successor laws as may be amended from time to time.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

555 GOLDEN GATE AVENUE, LLC,
a California limited liability company

By: JS Sullivan Capital, LLC,
a California limited liability company,
its Managing Member

By: 

Hyun-Sean Sullivan,
Managing Member

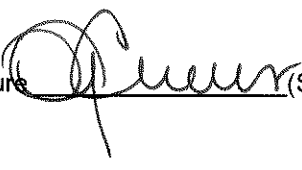
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On July 9, 2020 before me, P. G. Cuellar, Notary Public, personally appeared HYUN SEAN SULLIVAN who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)

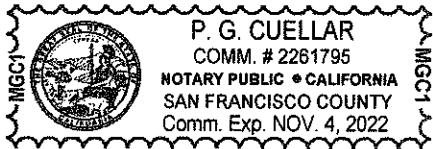


EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

PROPERTY:

That certain real property in the City and County of San Francisco shown on "Final Map 10009, recorded on June 12, 2020 in Book 1 of Final Maps at Pages 39 through 40, Official Records of the City and County of San Francisco, State of California.

ASSOCIATION PROPERTY:

That certain real property and related improvements in the City and County of San Francisco, designated as "**Association Property**" on the Condominium Plan of Elevant, recorded on _____, 2020 as Instrument No. _____, in the Official Records of the City and County of San Francisco, State of California ("**Condominium Plan**"), excepting therefrom the Units and Common Area as shown on the Condominium Plan.

EXHIBIT "B"
MAINTENANCE RESPONSIBILITY CHART

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Maintenance Areas. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
<i>Residential Units and Residential Owners – Allocation of Maintenance Responsibilities</i>							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit including, without limitation, all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit whether free-standing or built in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit, or the Association Property	N/A	O	O	O	N/A	N/A	N/A
Windows, including skylights, enclosing the Residential Unit, including metal frames, tracks and exterior screens of glass doors and windows	O (A -The exterior of windows)	O	O	O	A (exterior of the window frame only)	N/A	N/A
Doors enclosing the Residential Unit	O (interior) A (exterior)	A	A	A	O to paint interior A to paint exterior	N/A	N/A
Exclusive Use Areas (excluding, without limitation, any railings, walls and fencing surrounding such areas)	O	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	N/A

"O" indicates an obligation of the Owner.
"A" indicates an obligation of the Association.
"N/A" indicates an obligation that is "not applicable."
"CO" indicates an obligation of the Commercial Owner"

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Maintenance Areas. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
<i>Residential Units and Residential Owners – Allocation of Maintenance Responsibilities</i>							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Exterior fixtures including light fixtures, photocells, and light bulbs not servicing Exclusive Use Areas and front entry of the Residential Unit	A	A	A	A	A	N/A	N/A
Exterior fixtures including light fixtures, photocells and light bulbs servicing Exclusive Use Areas and front entry of the Residential Unit	O	O	O	O	O	N/A	N/A
The individual lock for the Residential Unit's applicable mailbox (subject to Postal requirements)	O	O	O	O	N/A	N/A	N/A
All Utility Facilities serving two or more Residential Units, and all private Utility Facilities	N/A	A	A	A	N/A	N/A	N/A
Cluster Mailboxes (excluding locks on individual mailboxes)	A	A	A	A	A	N/A	N/A
Walls, fences and railings on Association Property not enclosing Exclusive Use Areas	A	A	A	A	A	N/A	N/A
Walls, fencing and railings enclosing Exclusive Use Areas	O	A	A	A	A	A	N/A

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 "A" indicates an obligation of the Association.
 "N/A" indicates an obligation that is "not applicable."
 "CO" indicates an obligation of the Commercial Owner"

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Maintenance Areas and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
<i>Association Property – Allocation of Maintenance Responsibilities</i>							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
All Association Maintenance Areas including without limitation, roof, structural components, bearing walls, foundations, landscaping, open spaces situated within the Association Property, Storm Water Planter Areas, pollution control devices, sidewalks, planters and street trees, except for Exclusive Use Areas.	A	A	A	A	A	A	A

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 "CO" indicates an obligation of the Commercial Owner"

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Maintenance Areas and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
<i>Commercial Unit and Commercial Owners – Allocation of Maintenance Responsibilities</i>							
The interior of the Commercial Unit including, without limitation, all cabinets, plumbing fixtures, tenant improvements and all other items within the Commercial Unit, whether free-standing or built in	CO	CO	CO	CO	CO	CO (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Commercial Unit	N/A	CO	CO	CO	N/A	N/A	N/A
Exterior surface of plate glass and windows bordering the Commercial Unit	A	A	A	A	N/A	N/A	N/A
Doors enclosing the Commercial Unit and all locks, hinges and any other mechanical elements of the exterior doors to the Commercial Unit	CO	CO	CO	CO	CO	N/A	N/A
Exclusive Use Areas (excluding, without limitation, any railings, walls and fencing surrounding such areas)	CO	CO	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	A (excluding any Improvements installed by Owner)	N/A
Walls, fencing and railings enclosing Exclusive Use Areas	CO	CO	A	A	A	A	N/A

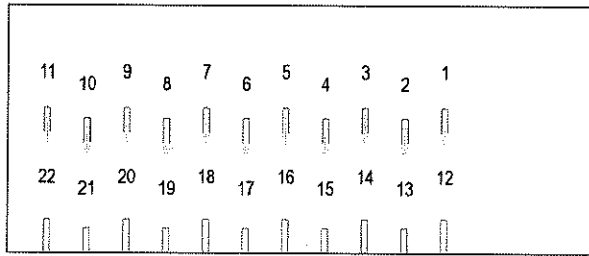
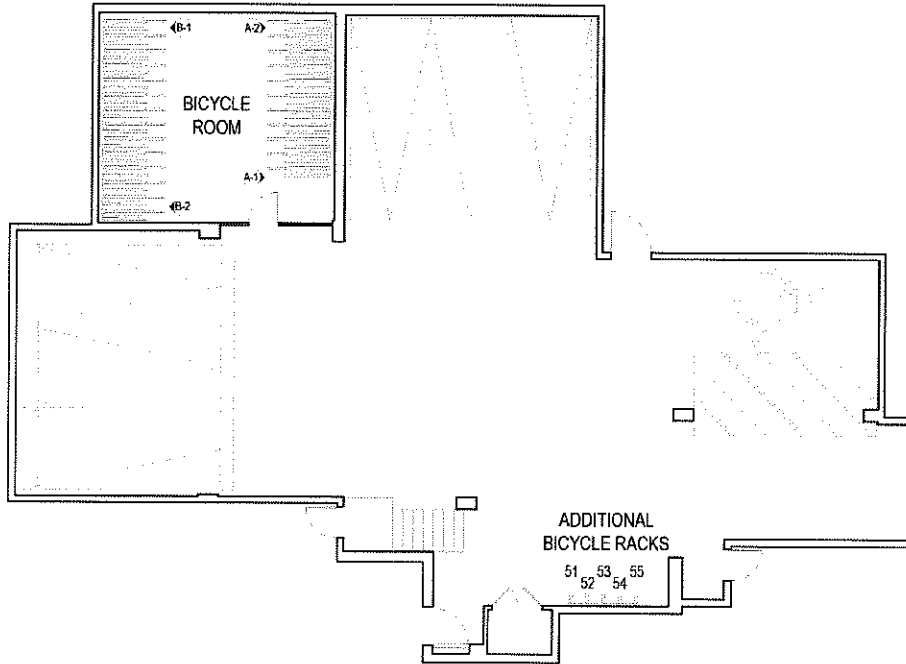
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 "A" indicates an obligation of the Association.
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EXHIBIT "C"
GENERAL VARIABLE EXPENSE ALLOCATION

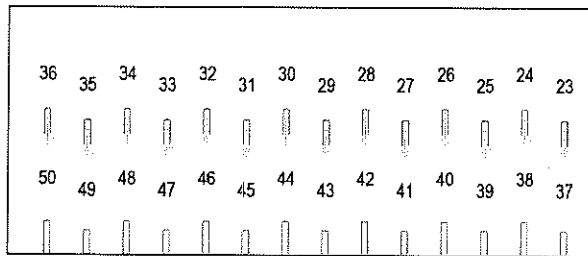
Elevant
Percentage of Variable Assessments
General Allocation

Unit Number	Percentage of Variable Expenses
201	2.57%
202	0.92%
203	1.42%
204	1.44%
205	0.91%
206	2.59%
301	2.57%
302	0.92%
303	1.42%
304	1.44%
305	0.91%
306	0.91%
401	2.57%
402	0.92%
403	1.42%
404	1.44%
405	0.91%
406	2.59%
501	2.57%
502	0.92%
503	1.42%
504	1.44%
505	0.91%
506	2.59%
601	2.57%
602	0.92%
603	1.42%
604	1.44%
605	0.91%
606	2.59%
701	2.57%
702	0.92%
703	1.42%
704	1.44%
705	0.91%
706	2.59%
801	1.83%
802	1.80%
803	1.36%
804	1.57%
805	2.21%
806	2.35%
901	1.82%
902	1.80%
903	1.36%
904	1.57%
905	2.21%
906	2.35%
1001	1.81%
1002	2.95%
1003	1.35%
1004	2.22%
1101	3.24%
1102	3.29%
1103	2.27%
C101	1.58%
C102	1.63%

EXHIBIT "D"
BICYCLE PARKING SPACES



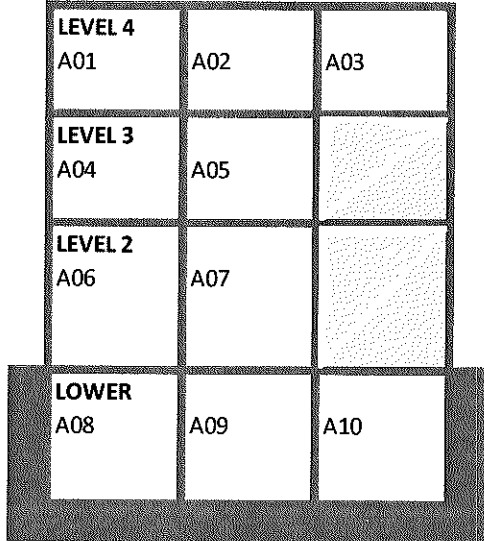
BICYCLE STORAGE ELEVATION A: WALL-MOUNTED BIKE RACKS



BICYCLE STORAGE ELEVATION B: DOUBLE STACKERS

EXHIBIT "E"
PARKING SPACES

GROUP A



GROUP B

