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Mission Walk Homeowners Association

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***DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF***

MISSION WALK

A CONDOMINIUM PROJECT

This Declaration contains a binding arbitration provision in accordance with the Federal Arbitration Act. You must read the arbitration provision carefully and should consult legal counsel with any questions.

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

Without limiting above, this document contains provisions prohibiting discrimination on the basis of race, religion, color, ancestry, national origin, age, sex, sexual orientation, marital or domestic partner status, gender identity, disability (including AIDS/HIV status), or any other basis prohibited by law.

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DECLARATION OF COVENANTS,
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OF
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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MISSION WALK ("**Declaration**") is made this 16th day of March 2009, by Berry Street, LLC, a California limited liability company ("**Declarant**").

ARTICLE I

INTENTION OF DECLARATION

1.1. FACTS. This Declaration is made with reference to the following facts.

1.1.1. Property Owned by Declarant. Declarant is the owner of all the real property and Improvements thereon commonly known as 330 and 335 Berry Street, located in the City and County of San Francisco, State of California, more particularly described as follows.

Lot 1 as shown on that certain map (the "330 Map") entitled "FINAL MAP 4329," filed for record on May 11, 2009, in Book 109 of Condominium Maps, at Pages 201 through 203, inclusive, in the Records of the City and County of San Francisco, State of California; and

Lot 1 as shown on that certain map (the "335 Map") entitled "FINAL MAP 4328," filed for record on May 11, 2009, in Book 109 of Condominium Maps, at Pages 198 through 200, inclusive, in the Records of the City and County of San Francisco, State of California (the 330 Map and 335 Map shall be collectively referred to in this Declaration as the "Final Maps").

1.1.2. Nature of Project:

Declarant intends to develop the Project, as defined herein as a common interest development and hereby declares that the Project is a residential condominium project within the meaning of California Civil Code Section 1351(f). The Project is intended to be created in conformity with the provisions of the California Davis-Stirling Common Interest Development Act (California Civil Code, Sections 1350 et seq.). To establish the condominium project, Declarant desires to impose on the Project, and any property annexed thereto, these mutually beneficial restrictions, easements, Assessments and liens under a comprehensive general plan of improvement and development for the benefit of all the Owners, Units and

Common Area within the Project and any property annexed thereto

1.2. APPLICABILITY OF RESTRICTIONS:

Pursuant to California Civil Code Sections 1353 and 1354, the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development, sale and management of the Project as a condominium project. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall be enforceable as equitable servitudes, shall run with the Project, and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project.

1.3. BOUNDARY MODIFICATIONS:

If the boundaries of the Project change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.3.1. Removed From Declaration:

Property which is removed from a Common Area parcel and added to real property which is not subject to this Declaration shall no longer constitute a part of such Common Area and shall no longer be subject to this Declaration.

1.3.2. Added to Declaration:

Property not subject to this Declaration which is added to a Common Area parcel shall be part of such Common Area parcel to which it is added and shall automatically be subject to all provisions of this Declaration.

1.4. NON DISCRIMINATION PROVISION.

There shall be no discrimination or segregation based on race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, marital or domestic partner status, gender identity, disability, (including AIDS/HIV status), familial status, or any other basis prohibited by law, in connection with the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of any of the Project or any portion thereof.

ARTICLE 2

DEFINITIONS

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Final Maps, the Condominium Plan and any grant deed to a Condominium shall have the meanings specified in this Article.

2.1. ADDITIONAL CHARGES:

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

2.2. ALTERATION:

The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and or changing any Improvement or changing the color or shade of any Improvement.

2.3. ARTICLES:

The term "Articles" shall mean the Articles of Incorporation of the Association which are or shall be filed in the Office of the Secretary of State of the State of California.

2.4. ASSESSMENT:

The term "Assessment" refers to the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Reimbursement Assessments.

2.5. ASSESSMENT LIEN:

The term "Assessment Lien" shall have the meaning ascribed thereto in Section 6.8.

2.6. ASSOCIATION:

The term "Association" shall mean the **MISSION WALK HOMEOWNERS ASSOCIATION**, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.7. BALCONY:

The term "Balcony" shall mean each portion of the Common Area designated on the Condominium Plan with the letter "B" followed by the Unit number to which such Balcony is assigned as Exclusive Use Common Area. The perimeter boundaries of each Balcony are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Balcony. The vertical boundaries of each Balcony are to the interior finished surface of the Balcony floor and to a plane extended from the ceiling of the Unit which adjoins the Balcony. The approximate dimensions of each Balcony are shown on the Condominium Plan. Each Balcony includes the airspace encompassed within the boundaries.

2.8. BOARD:

The term "Board" shall mean the Board of Directors of the Association.

2.9. BUILDING:

The term "Building" shall mean each of the two condominium buildings located in the Project, one on each lot as shown on the Final Maps.

2.10. BUDGET:

The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Article 6 of this Declaration.

2.11. BYLAWS:

The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

2.12. CITY:

The term "City" shall mean the City of San Francisco, County of San Francisco, State of California.

2.13. COMMON AREA:

The term "Common Area" shall mean all of the Project, Improvements and airspace which are not expressly made a part of any Unit. Without limiting the foregoing, the Common Area includes: land; driveways and garage areas; trash enclosures; exterior stairs, Balconies, Patios and Parking Spaces; elevators and elevator shafts; basements; bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; solar heating equipment (if any); tanks, pumps, motors, ducts, flues and chutes; HVAC condensers and other Building equipment on the roof (if any), boilers, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit, and excepting utility installations located within a Unit), required to provide power, light, telephone, gas, water, sewage, drainage, heating, air conditioning and elevator service; interior sprinklers, sprinkler pipes (but not sprinkler heads which protrude into the air space of a Unit or are recessed into the

Unit ceilings), and other built-in fire protection devices and equipment; exterior sprinklers and irrigation systems; photovoltaic panels; and central television antenna, satellite, or cable television installations.

2.14. CONDOMINIUM:

The term "Condominium" shall mean an estate in real property consisting of an undivided interest in common in a portion of the Common Area, a separate fee interest in space defined herein as a Unit and easements in portions of the Project as provided in this Declaration.

2.15. CONDOMINIUM PLAN:

The term "Condominium Plan" shall mean that certain condominium plan prepared in accordance with Section 1351 of the California Civil Code and recorded on the 29th day of JUNE, 2009, as Instrument Number 2009-5787376, in the Official Records of the County.

2.16. COUNTY:

The term "County" shall mean the County of San Francisco, State of California.

2.17. CURRENT OPERATION ACCOUNT:

The term "Current Operation Account" shall mean an account established by the Association for the purposes set forth in Section 6.6 of this Declaration.

2.18. DECLARANT:

The term "Declarant" shall mean Berry Street, LLC, a California limited liability company. The term "Declarant" shall also mean successors in interest of Declarant if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in the Project for the purpose of development and/or sale and (ii) a certificate has been recorded in the County in which the successor(s) in interest assume the rights and duties of Declarant to the portion of the Project so acquired. There may be more than one Declarant.

2.19. DECLARANT ADR PROVISIONS:

The term "Declarant ADR Provisions" shall mean the provisions for resolution of disputes between an Owner or the Association, on the one hand, and the Declarant, on the other hand, as set forth in Exhibit C to this Declaration.

2.20. DECLARATION:

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Mission Walk, and any amendments hereto.

2.21. DIRECTOR:

The term "Director" shall mean a person appointed or elected (pursuant to the

Bylaws) to, and serving on, the Board.

2.22. ELIGIBLE HOLDER:

The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Section 9.5.

2.23. EXCLUSIVE USE COMMON AREA:

The term "Exclusive Use Common Area" shall mean those portions of the Common Area which are shown on the Condominium Plan and defined in this Declaration as Balconies and Patios. The term "Exclusive Use Common Area" shall also mean those portions of the Common Area, such as Parking Spaces, assigned by the Association to and for the exclusive use of a particular Owner and which is appurtenant to the separate interest of a particular Owner.

2.24. FINAL MAPS:

The term "Final Maps" shall mean, collectively, the 330 Map and the 335 Map as defined in Section 1.1.1, above.

2.25. FIRST MORTGAGE:

The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

2.26. FIRST MORTGAGEE:

The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

2.27. IMPROVEMENTS:

The term "Improvements" shall mean everything constructed, installed or planned on the Project, including without limitation Buildings, and all other structures, landscaping, and all other works of improvement as defined in Section 3106 of the California Civil Code, constructed or to be constructed upon property subject to this Declaration, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public or by such entity or utility company.

2.28. INSTITUTIONAL MORTGAGEE:

The term "Institutional Mortgagee" shall mean (i) a First Mortgagee which is the State of California, a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an

insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Department of Veterans Affairs; (iii) a Mortgagee under any state or local mortgage assistance or limited equity housing program in place for Units in the Project; including but not limited to the San Francisco Redevelopment Agency; or (iv) Declarant or any affiliate of Declarant, including but not limited to Homebricks, Inc.

2.29. INVITEE:

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

2.30. MAINTAIN:

The term "Maintain" or "Maintained" (but not the word "maintenance") shall mean taking all actions reasonably necessary to keep an Improvement in first class condition and repair, which actions include but are not limited to regular inspections, painting, maintenance, refinishing, repairing, replacing and reconstructing the Improvements, and in the case of landscaping, irrigating and fertilizing the landscaping. The Owners and the Association shall have no responsibility to Maintain any Improvement that is Maintained by a third party or the public or a quasi-public entity or utility company even if the third party or the public or a quasi-public entity or utility company public fails to perform all actions required by this Section.

2.31. MAINTENANCE MANUAL:

The term "Maintenance Manual" shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Association to Maintain the Improvements for which the Association is responsible and for each Owner to Maintain the Improvements for which the Owner is responsible. The Maintenance Manual includes, without limitation, all maintenance obligations and schedules communicated to the Association or the Owners by Declarant, its builder (if applicable) or product manufacturers in accordance with California Civil Code Section 907. The Maintenance Manual may be amended from time to time by the written agreement of both Declarant and the Association (if such amendment shall apply to Association or Owner maintained Improvements) or by Declarant alone (if such amendment shall apply to portions of the Project then owned by Declarant). There may be more than one (1) Maintenance Manual at any given time, each of which applies to different Improvements.

2.32. MAJOR COMPONENT:

The term "Major Component" shall mean those Improvements, or major aspects or portions of Improvements, which the Association is obligated hereunder to repair, restore, replace and/or maintain and for which the Reserve Account(s) is established under Section 6.6.

2.33. MANAGER:

The term "Manager" shall mean the person or entity appointed or hired to manage and operate the Project.

2.34. MEMBER:

The term "Member" shall mean an Owner.

2.35. MORTGAGE:

The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

2.36. MORTGAGEE:

The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as beneficiary under a deed of trust.

2.37. MULTI-PURPOSE ROOM:

The term "Multi-Purpose Room" shall mean that portion of the Common Area within the Building at 335 Berry Street shown on the Condominium Plan and identified as the "Multi-Purpose Room."

2.38. NOTICE AND HEARING:

The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.39. OWNER:

The term "Owner" shall mean the holder of record fee title to a Condominium, including Declarant as to each Condominium owned by Declarant. If more than one person owns a single Condominium, the term "Owner" shall mean all owners of that Condominium. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude any person having an interest in a Condominium merely as security for performance of an obligation.

2.40. PARKING AREA:

The term "Parking Area" shall mean each Parking Space, and all other parking located within the Project garage areas.

2.41. PARKING SPACE:

The term "Parking Space" shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered parcel designated with the letters "PS". The perimeter boundaries of each Parking Space consist of the vertical planes extended from the floor to the ceiling along the dimension lines shown on the Condominium Plan. The vertical boundaries of each Parking Space are to the interior finished surface of the floor and to a horizontal plane seven feet (7') above the floor. The approximate dimensions of each Parking

Space are shown on the Condominium Plan. Each Parking Space includes the airspace encompassed within the boundaries.

2.42. PATIO:

The term "Patio" shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered parcel designated with the letter "P". The perimeter boundaries of each Patio are to the interior finished surfaces of the fences and/or railings and to the exterior finished surface of any Common Area walls enclosing the Patio. The vertical boundaries of each Patio are to the interior surface of the ground, slab or podium, as applicable, and a horizontal plane extended from the ceiling of the Unit which adjoins the Patio. The approximate dimensions of each Patio are shown on the Condominium Plan. Each Patio includes the airspace encompassed within the boundaries.

2.43. PROJECT:

The term "Project" shall mean all of the real property described in Section 1.1.1 and all Improvements thereon.

2.44. PROJECT DOCUMENTS:

The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

2.45. PUBLIC REPORT:

The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for the Project.

2.46. REGULAR ASSESSMENT:

The term "Regular Assessment" shall mean a regular assessment determined and levied pursuant to Section 6.2 of this Declaration.

2.47. REIMBURSEMENT ASSESSMENT:

The term "Reimbursement Assessment" shall mean a reimbursement assessment determined and levied pursuant to Section 6.5 of this Declaration.

2.48. RESERVE ACCOUNT:

The term "Reserve Account" shall mean a reserve account established by the Association for the purposes set forth in Section 6.6 of this Declaration.

2.49. RULES:

The term "Rules" shall mean the rules adopted by the Association, including architectural guidelines, restrictions and procedures.

2.50. SPECIAL ASSESSMENT:

The term "Special Assessment" shall mean a Special Assessment determined and levied pursuant to Section 6.3 of this Declaration.

2.51. UNIT:

The term "Unit" shall mean that portion of the Project which is shown on the Condominium Plan as an individually numbered parcel. The boundaries of each Unit shall be to the interior unfinished surfaces of the walls, floors, ceilings, doors and windows. Each Unit includes the airspace encompassed by its boundaries but does not include load bearing walls and walls containing utility conduits. Fixtures and appliances located within the boundaries of a Unit are also part of a Unit. Utility systems and components thereof and fixtures and appliances which are located wholly within the boundaries of a Unit and which service only that Unit are also part of a Unit. The approximate dimensions of each Unit are shown on the Condominium Plan; however, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries.

ARTICLE 3

OWNERSHIP AND EASEMENTS

3.1. NON-SEVERABILITY:

The interests in the Common Area cannot be changed after the conveyance of the first Condominium in the Project. The undivided interests in the Common Area and the fee title to the respective Units conveyed therewith and the easements appurtenant thereto are not separable and may not be separately conveyed unless the Condominium Plan is amended in accordance with California Civil Code Section 1351(e). If the Condominium Plan is amended, any conveyances necessary to cause ownership interests to conform to the amended Condominium Plan shall not violate this Section. Each undivided interest in the Common Area and each easement appurtenant to the Unit shall be deemed to be conveyed or encumbered with the respective Unit even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Unit.

3.2. OWNERSHIP OF UNITS:

Title to each Unit in the Project shall be conveyed in fee to an Owner. If the Association owns a Unit, the Association shall not be considered an Owner for the purposes of this Declaration. If more than one person and/or entity (other than the Association) owns an undivided interest in the same Unit, such persons and/or entities shall constitute one Owner.

3.3. OWNERSHIP OF COMMON AREA:

Each Owner of a Unit shall be conveyed an undivided interest in the Common Area that is contained within the subdivision lot and Building in which such Unit is located, as a

tenant-in-common with the other Owners within such Building. The specific interest of each Owner in the Common Area is set forth on Exhibit "A".

3.4. EASEMENTS:

The ownership interests in the Common Area and Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.4.1. Easements On Final Maps:

The Common Area and Units are subject to the easements and rights of way shown on the Final Maps.

3.4.2. Additional Easements:

Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted or reserved by Declarant to install, operate and Maintain utilities and drainage facilities necessary for the development of the Project.

3.4.3. Easements For Common Area:

There is reserved and granted to each Unit, as dominant tenement, over and across the Common Area (excluding Exclusive Use Common Area), as servient tenement, a non-exclusive appurtenant easement for ingress, egress, use and enjoyment of the Common Area. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The Parking Areas located behind security gates in the garages shall be for the exclusive use of the Owners and their authorized Invitees and shall be subject to security clearance procedures (e.g., for retail deliveries) as may be established by the Declarant or the Board from time to time.

(b) The Declarant and Association, without a vote of the Owners, shall have the right to grant exclusive easements or licenses for Parking Spaces in accordance with this Declaration.

(c) Use of the Multi-Purpose Room shall be subject to Rules as may be established by the Board, and such use may be restricted to meetings, gatherings or other community functions in the Board's discretion.

(d) The Association shall have the right, after Notice and Hearing, to

suspend or limit any Owner's right to use the Multi-Purpose Room or other recreational facilities in the Common Area.

(e) The Association shall have the right to limit the number of Owners' guests and to adopt and enforce Rules adopted by the Association.

(f) The Association shall have the right to improve, repair or maintain the Common Area.

(g) The Association shall have the right to adopt and enforce Rules concerning the control and use of the Common Area and any garage, garage entrance, garage ramp and/or other paving areas located in the Common Area, including the kinds of vehicles permitted, speed limits, and permitted use of the Parking Areas; in this regard, Declarant or the Association is authorized to delegate to the City or any agency thereof or contract with any private security patrol company to exercise its authorized rights in connection with parking in the Parking Area.

(h) The Association shall have the right to dedicate and/or grant easements over all or any portion of the Common Area.

Each Owner is entitled to reasonable access to the Common Area for the purpose of maintaining the internal and external telephone wiring serving his Unit, which wiring shall be considered a part of the Exclusive Use Common Area appurtenant to that Unit. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the exterior of the Common Area, and other conditions as the Association determines reasonable.

3.4.4. Exclusive Use Common Area:

There are reserved and granted to each Unit and to each Owner of a Unit exclusive appurtenant easements for the use, possession and enjoyment of those Exclusive Use Common Areas designated on the Condominium Plan which bear a number that corresponds to that of the Unit and for those Exclusive Use Common Areas specifically designated in the individual Condominium grant deed. All easements to Exclusive Use Common Area are subject, however, to the right of the Association to enter in and upon the Exclusive Use Common Area for the purpose of maintaining and repairing the Exclusive Use Common Area and for enforcing the terms of this Declaration. The grant of any easement for a Patio located at grade level shall include the area beneath the surface of the earth that is necessary for the cultivation, landscaping and drainage of the Patio.

3.4.5. Utilities:

There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Unit, jointly), as the servient tenement, non-exclusive easements for utility lines, wires and conduits installed by Declarant. Additionally, this Declaration and each Condominium and the Common Area shall be subject to all easements granted by Declarant to install, operate and Maintain utilities (which shall include without limitation conduit, satellite, cable and other

facilities for television, internet, telephone and other telecommunications services to Owners) necessary or appropriate for the development of the Project and for the provision of such services to the Owners. Declarant reserves the right to grant additional easements and rights of way throughout the Project to utilities, cable service providers, local service providers, and public agencies as it deems necessary for the proper development and provision of utilities and communication services for the Project.

3.4.6. Encroachment:

There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and the Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement, over, under and across each Unit, as servient tenements, non-exclusive easements for encroachment, support, occupancy and use of such portions of Units and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any Building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design and which substantially conforms to the legal boundaries shown on the Condominium Plan. The easement for maintenance of the encroaching Improvement shall exist for as long as the encroachment 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 for encroachment may but need not be cured by Alteration of the Improvement.

3.4.7. Support, Maintenance and Repair:

There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and to all other Units, as dominant tenements, through each Unit and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Units.

3.4.8. Additional Easements:

Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project.

3.4.9. Association's Easements:

There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Project Documents, including without limitation and subject to Section 5.8, the right to enter upon Common Area, Exclusive Use Common Area and Units.

3.4.10. Right of Entry to Inspect:

Declarant hereby reserves for itself and its employees, agents and

contractors, and for Declarant's Manager and Declarant's Manager's employees, agents and contractors (collectively "**Declarant Parties**"), the right (but not the obligation) to enter in and upon the Common Area for the purposes of performing an annual inspection of the Common Area and Improvements thereon (including through the Units to the extent necessary to gain access to Exclusive Use Common Areas). The purpose of the inspection is to ascertain the condition of Common Area Improvements and the adequate Maintenance thereof by the Association. Declarant Parties shall give the Association reasonable advance written notice of the date and time of the inspection. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After completing the inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations as to maintenance and repair Declarant Parties believes are appropriate. This right of entry shall exist until the date which is eleven (11) years following the date of completion of the Common Area in the Project.

3.4.11. Right of Entry to Perform Work:

Declarant hereby reserves for itself and its employees, agents and contractors, and for Declarant's Manager and Declarant's Manager's employees, agents and contractors (collectively "**Declarant Parties**"), the right to enter in and upon those portions of (a) the Common Area and (b) each Unit that are necessary or appropriate (as determined in Declarant Parties' reasonable discretion) for the purposes of performing repairs or doing other work that (i) has been agreed to by the Association and Declarant Parties or by an Owner and Declarant Parties or (ii) Declarant Parties elects to perform pursuant to Section 918 of the California Civil Code or any similar provision provided this Declaration. This right of entry includes, but is not limited to, entering into one Unit to perform work which benefits another Unit(s). Declarant Parties shall give all affected parties at least seventy two (72) hours advance notice of the dates and times work will be performed (except in an emergency for which no notice is required). Notice shall be written or verbal.

3.4.12. Right to Photograph:

Declarant hereby reserves a non-exclusive easement and right in gross to display, use and distribute for any and all purposes photographs, video recordings and similar reproductions of all Units and Improvements constructed anywhere in the Project.

3.5. PARKING SPACES:

3.5.1. Availability of Parking Spaces:

Owners acknowledge that there are fewer Parking Spaces in the project than Condominiums, and not all Condominiums will have an assigned or licensed Parking Space.

3.5.2. Initial Grants of Licenses:

Declarant hereby reserves the right to grant a license for the exclusive use of each Parking Space in the Project ("**License**"). Declarant may charge for the assignment of a Parking Space in connection with the sale of Unit. Such charge shall be in addition to any monthly or periodic charge payable to the Association for using the Parking Space as set forth below.

Declarant shall provide copies of the initial assignments of Parking Spaces to the Association ("**Initial Assignment List**").

3.5.3. Unassigned Parking Spaces:

If any Parking Space remains unassigned when Declarant conveys title to the last Condominium in the Project, (a) the Initial Assignment List shall note which Parking Spaces are not assigned and (b) all rights to all such unassigned Parking Spaces shall automatically transfer to the Association, without the necessity of further action. Thereafter, the Association shall have the right but not the obligation to grant a License to each unassigned Parking Space to the Owner of a Condominium.

3.5.4. Licenses:

Licenses shall be in writing and shall clearly identify which Parking Space(s), as shown on the Condominium Plan, is assigned to the Owner(s). The Association may establish in the Rules its own policies and procedures regarding the use and assignment of Licenses by the Association.

3.5.5. Preference for Low Emissions/High Fuel Efficient Vehicles.

(a) Not less than six (6) of the Parking Spaces in the Project shall be set aside in preferred locations as determined by Declarant or the Association (which preferred spaces shall generally be those closest to exits, stairwells or elevators, excluding handicapped reserved spaces), and reserved for assignment to Unit Owners or occupants who will use the Parking Spaces solely for parking of fuel-efficient and/or low-emissions vehicles ("**Efficient Vehicles**"). Any Owner of a Unit who has been assigned or is seeking assignment by the Association of a parking License to one of these preferred Parking Spaces shall be required to provide written evidence, satisfactory to the Board or Manager, of ownership and use by the Unit occupant of an Efficient Vehicle. Upon cessation of such ownership and use of an Efficient Vehicle, the Association may cause such Owner's License to be exchanged with a License to a non-preferred Parking Space then held by an Owner who has established to the Board or Manager that he or she owns and uses an Efficient Vehicle.

(b) Only Efficient Vehicles shall be parked in the preferred Parking Spaces, unless there are fewer than six (6) Owners in the Project with Efficient Vehicles eligible for such Parking Spaces. The Association or its Manager shall conduct periodic inspections of the preferred Parking Spaces to verify that they are used for Efficient Vehicle parking. Violation of this restriction may result in revocation of the License.

(c) The Association shall establish in the Rules policies and procedures consistent with this subsection for implementing the Efficient Vehicle restriction for the preferred Parking Spaces; provided, however, that the Association may not by such Rules terminate the Efficient Vehicle preferences and restrictions set forth in this Section.

(d) For purposes of this subsection:

(1) "fuel-efficient and/or low emissions vehicles" shall mean vehicles that either (i) are classified as "Zero Emissions Vehicles" California Air Resources Board, (ii) have achieved a minimum green score of 40 on the American Council for an Energy Efficient Economy Green America annual vehicle rating guide, or (iii) otherwise meet the requirements for "fuel-efficient and/or low emissions vehicles" under LEED for New Construction & Major Renovations published by U.S. Green Building Council, as the same may be amended from time to time;

(2) "ownership" shall include leasing under a written automobile lease;

3.5.6. Return of Licenses to Association:

A conveyance of fee title to a Unit (including a transfer pursuant to a foreclosure proceeding) shall operate to automatically terminate the parking License assigned to that Unit and to return the parking space to the Association for re-assignment. The new Owner of the Unit shall be placed on any existing waiting list for a Parking Space License. The Parking Space shall then be Licensed to the next eligible Unit on the Association's waiting list. No Unit shall be assigned more than one (1) Parking Space.

3.5.7. Assignments of Licenses:

A License may not be assigned, sublet, conveyed or sold by an Owner to another person or entity (including another Owner).

3.5.8. Association May Change Location:

After the initial assignment by Declarant, the Association shall have the right, but not the obligation, to terminate a Parking Space License or to change the location of any Parking Space assignment, without Owner consent, solely for the purpose of providing a Parking Space which accommodates handicapped access to a vehicle to the occupants of a Unit who are legally entitled to use handicapped parking spaces under the California Vehicle Code. Upon request by the Association, the Owner and the Association shall execute and record documents which document the termination of Parking Space License or exchange of Parking Spaces.

3.5.9. Association Records:

Upon receipt of the Initial Assignment List, the Association shall update the Assignment List each time it assigns a Parking Space.

3.6. CAR SHARE:

The Project includes one or more parking spaces reserved for "Car Share," as designated on the Condominium Plan. These Car Share spaces shall not be assigned to individual Owners. The Association shall hold these spaces for operation of a car/ride sharing program with a qualified car share company.

3.7. GATE ENTRY AT 335 BERRY:

The entry gate at the bottom of the stairwell adjacent to Units 335-106 and 335-107 ("Entry Gate") is not a general entrance to the 335 Berry Building but shall be used only as: (i) an emergency exit from the podium courtyard via the stairwell and (ii) an entry for the Owners of Units 335-106 and 335-107. The Entry Gate shall remain fitted with a key fob or other security system to allow entry from the outside only by such Owners, and keys to the Entry Gate shall not be issued or provided to any other Owners. The foregoing notwithstanding, maintenance personnel shall be provided with keys to the Entry Gate for maintenance purposes. Locksets for the Entry Gate shall be connected to the Building alarm system to prevent activation of the alarm upon entry by persons using authorized keys or key systems.

3.8. JUDICIAL PARTITION:

3.8.1. Waiver of Partition:

Except as provided in California Civil Code Section 1359, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 1359. If a Condominium is owned by two or more Owners as tenants-in-common, as joint tenants or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition between the co-Owners of a single Condominium.

3.8.2. Power of Attorney:

If there is a judicial partition of the Project pursuant to California Civil Code Section 1359 or this Declaration, each Owner, for himself and his successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section and in California Civil Code Section 1359.

ARTICLE 4

USES AND RESTRICTIONS

4.1. USE AND OCCUPANCY OF UNITS:

Each Unit shall be used solely for residential purposes. Except for accessory uses within Units permitted by local ordinances, and except for the business of Declarant in completing the development and disposition of the Condominiums in the Project, no part of the Project may be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purpose, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. Notwithstanding the foregoing, this Section shall not preclude any of the above-described activities, provided that: (a) the activity complies with the law; (b) the patrons or clientele of the activity do not visit the Unit or park automobiles or other vehicles in the Project; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Unit; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (e) the activity is consistent with the residential character of the Project and this Declaration. Each Owner shall comply with all the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to his Condominium.

4.2. RENTAL OF UNITS:

Each of the Units in the Project shall be subject to restrictions imposed by the San Francisco Redevelopment Agency under an approved program for below market rate sales and ownership in the Project, as more particularly set forth in Limited Equity Home Ownership Program Declarations entered into, or to be entered into, by each Owner of a Unit and the San Francisco Redevelopment Agency ("**Limited Equity Declarations**"). Among these restrictions is a requirement that the Unit be owner-occupied and may not be rented or leased without the prior written consent of the San Francisco Redevelopment Agency.

As such, the rental or leasing of Condominiums in the Project is strictly prohibited, unless the Owner of the Unit sought to be rented or leased provides written notice of such intention to the Board and further provides to the Board evidence satisfactory to the Board that the San Francisco Redevelopment Agency has given its prior written consent to the lease or rental pursuant to the applicable Limited Equity Declaration. In addition to the foregoing, any lease or rental of a Unit in the Project shall be subject to the following additional restrictions:

(a) there must be a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Project Documents and (ii) a failure to comply with any provision of the Project Documents shall constitute a default under the rental or lease agreement;

(b) the period of the rental or lease must not be less than thirty (30) days; and

- (c) the Owner must give each tenant a copy of the Project Documents.

Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Condominium; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration. The foregoing notwithstanding, this Section 4.2 shall in no way supersede owner-occupancy requirements imposed by the Limited Equity Declarations or otherwise imposed by any governmental entity in connection with affordable or below market rate Units in the Project.

4.3. ANIMALS:

No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Area except that customary household pets may be kept in Units so long as they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Rules. "Customary household pet," as used in this Section, shall mean any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal agreed to between the Association and an Owner. "Unreasonable quantities," as used in this Section, ordinarily means more than two (2) dogs or two (2) cats, or one (1) dog and one (1) cat per Unit; however, the Association may determine that a reasonable number in any instance may be more or less. The Board shall specifically have the right, but not the obligation, to prohibit any pet which, after Notice and Hearing, is found to be dangerous or a nuisance to other Owners. No dog shall be allowed in the accessible portions of the Common Area unless it is under the control of a responsible person by leash. Each Owner or Invitee shall clean up after any pet permitted on the Common Area by such Owner or Invitee so that the Common Area is restored to the condition it was in immediately preceding its use by such pet and Owner or Invitee. Any Owner who keeps any animal in the Project shall indemnify, defend and hold harmless the Association, its officers, Directors, contractors, agents and employees from any claim brought against the Association, its officers, Directors, agents and employees for personal injuries or property damage caused by such animal.

4.4. USE OF COMMON AREA:

4.4.1. In General:

All use of the Common Area is subject to the Rules. Except as provided herein, all Owners and their Invitees may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area except as directed by the Board. Nothing shall be stored or kept in the Common Area (excluding Exclusive Use Common Area) without the prior consent of the Board. No Alterations or additions to the Common Area shall be permitted without the approval of the Board. No waste shall be committed in the Common Area. Access to roofs shall be restricted to persons authorized by the Board. The provisions of this Declaration concerning using, Maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

4.4.2. Multi-Purpose Room:

Use of the Multi-Purpose Room shall be limited to those uses as may be allowed or directed by the Board.

4.4.3. Emergency Exit:

The stairway off of the Project podium leading to Mission Creek Park shall be used for emergency egress only.

4.4.4. Construction in the Common Area:

Except as set forth in Section 5.2, no person other than the Declarant, its successors and assigns, or the Association or its duly authorized agents, shall Maintain or make any Alterations to any Improvement upon any Common Area. Any structures located within the Common Area, or any other area outside the Units shall be subject to the design review approval of the Association and, if applicable, the City.

4.4.5. Delegation of Use:

An Owner may delegate his right to enjoyment of the Common Areas for members of his or her family, tenants, or contract purchasers who reside in the Unit, or guests, subject, however, to the provisions of this Declaration, the Articles, the Bylaws, and the Rules.

4.5. PARKING:

4.5.1. Authorized Vehicles:

The following vehicles are "Authorized Vehicles": validly licensed passenger automobiles, sports utility vehicles, passenger vans designed to accommodate eight (8) or fewer people, motorcycles and trucks having a load capacity of one-half (1/2) ton or less and which fit entirely within Parking Spaces without inhibiting or restricting travel of other Authorized Vehicles in the garage areas. An Authorized Vehicle may be parked only in unassigned Parking Spaces or the Parking Space that the Owner of the Authorized Vehicle is entitled to use. No vehicle may be parked in a Parking Space which is too small to accommodate the size of the vehicle. No person may park a vehicle in a manner which the Association determines restricts the passage of pedestrians through the Project, garages or other Parking Areas. Commercial markings on Authorized Vehicles may be regulated by the Rules. Commercial vehicles providing services to a Unit or the Common Area may be parked in unassigned Parking Spaces while such services or equipment are being provided. No unreasonably noisy or smoky vehicles shall be operated within the Project. Use of Parking Areas are subject to the Rules. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

4.5.2. Prohibited Vehicles:

The following vehicles are "Prohibited Vehicles:" (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.); (b) commercial-type vehicles (e.g., tank

trucks, dump trucks, step vans, concrete trucks and limousines); (c) buses or vans designed to accommodate more than eight (8) people; (d) vehicles having more than two (2) axles; (e) trailers; (f) inoperable vehicles or parts of vehicles; (g) aircraft; (h) any vehicle or vehicular equipment deemed a nuisance by the Board; and (i) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept anywhere within the Project except as set forth in Section 4.5.3. 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.

4.5.3. Garage Use: Garage areas enclosed by security gates in the Project shall be reserved for Owners only.

4.5.4. General Restrictions: No maintenance or restoration of any vehicle may be conducted within the Project except in emergency circumstances. Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or tenant and kept in the Project must be parked in designated, marked Parking Spaces.

4.5.5. Visitor Parking: The Board may adopt limitations on guest parking in the Project, including but not limited to time restrictions and pick-up/loading only designations.

4.5.6. Parking Regulations: Without limiting the foregoing, the Board may establish Rules regarding use of the Parking Areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Project, including removing violating vehicles from the Project pursuant to California Vehicle Code Section 22658.2 or the applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations.

4.6. SIGNS:

All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. Subject to Section 1353.6 of the California Civil Code, no signs of any kind may be displayed to the public view on or from any Unit or the Common Area in the Project, except as follows:

(a) One (1) sign of reasonable dimensions may be placed within the window of a Unit advertising the Condominium for sale or rent;

(b) Signs may be displayed by Declarant on Common Area or unsold Units, as Declarant deems appropriate, advertising Condominiums owned by Declarant for sale or rent;

(c) Appropriate signs may be displayed by the Association to identify the Project;

(d) Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board; and

- (e) Signs required by legal proceedings may be displayed.

4.7. STORAGE OF WASTE MATERIALS:

All rubbish, trash, garbage, recyclables and accumulated waste material (collectively "Waste Materials") shall be regularly removed from Common Area and Units and shall not be allowed to accumulate or to create an unhealthy condition. Owners shall be responsible for placing recyclables in designated recycling containers, and shall be responsible for using the trash chutes in the building to dispose of Waste Materials that physically fit through the trash chute without creating any obstruction. Waste Materials which do not fit through the trash chute without creating an obstruction shall be placed in a Waste Materials service areas within the Project garages. Owners of Units without trash chutes (including first floor Unit Owners) are responsible for carrying their Waste Materials to the appropriate receptacles within Waste Material service areas in the Project garages. The Association shall remove Waste Materials from the central enclosure areas within the Project, transport the Waste Material bins from garage collection areas to designated trash pick-up areas on the days of the week established for pick-up, and return bins to the designated service areas after pick-up. No exterior individual trash containers or receptacles shall be permitted except on the regularly scheduled pick-up day. No toxic or hazardous Waste Materials shall be placed in a trash chute, or in any a Waste Materials service area or bin, or poured down any drain.

4.8. ANTENNAS:

4.8.1. Except as may be erected or constructed by Declarant, or installed by a licensed public or quasi-public utility or cable franchise with the approval of the Board, no outside television antenna, aerial, radio tower satellite dish, or other such device (collectively "Video Antennas") having a diameter or maximum diagonal measurement of greater than one (1) meter may be erected, constructed or placed anywhere within the Common Area or within any Unit.

4.8.2. The Board may adopt reasonable Rules concerning installation and use of antennas, aerals, and/or satellite dishes having a diameter or maximum diagonal measurement of less than one (1) meter, provided that such Rules, and the application thereof, comply with applicable laws, including but not limited to, the provisions of Section 1376 of California Civil Code, as that statute may be amended from time to time.

4.9. EXTERIOR LIGHTING:

No Owner shall remove, damage or disable any light physically located outside the Owner's Unit.

4.10. INVITEES:

Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner's Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against such Owner for violations committed by his Invitee.

4.11. RULES:

Owners and their Invitees shall comply with all provisions of this Declaration, the Bylaws and Rules.

4.12. SPORTS EQUIPMENT:

No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Unit or permanently placed within any Exclusive Use Common Area. Portable or movable basketball equipment or other movable sports apparatus may not remain overnight where Visible from adjacent Units or streets without the prior approval of the Board.

4.13. WINDOW COVERINGS:

All drapes, window shades or other window coverings installed in the windows of Units which are visible from the exterior of the Unit shall comply with the Rules, if applicable. Any drapes or other window coverings installed in compliance with the Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after close of escrow for the Unit.

4.14. OUTSIDE INSTALLATIONS:

The following outside installations are prohibited: (a) clotheslines, Balcony or Patio covers, wiring, or air conditioning equipment (except as maintained by the Association on the building roofs); or (b) Improvements protruding through the walls or roofs of buildings. Outdoor patio or lounge furniture, potted plants and barbecue equipment may be kept within Patios or Balconies accordance with the Rules, if applicable. No clothing fabrics or unsightly articles may be hung, dried or aired in the Project. Neither Patios nor Balconies shall be used for any type of storage, including bicycle storage.

4.15. INSURANCE HAZARDS:

Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Association. No Owner shall permit anything to be done or kept in any Unit or in the Common Area which might result in the cancellation of insurance on any part of the Common Area, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. Owners traveling within private streets by any means assume any and all risks associated with such travel.

4.16. FURTHER SUBDIVISION:

Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease his entire Condominium by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Condominium; or (c) transfer or sell any

Condominium to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Condominium to comply with the Rules shall constitute a default under the lease or rental agreement.

4.17. VIEW OBSTRUCTIONS:

Each Owner acknowledges that (a) there are no legally protected views in the Project, and no Unit is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant may impair the view from any Unit, and each Owner hereby consents to such view impairment.

4.18. NO WATERBEDS:

Waterbeds are prohibited in the Project.

4.19. ROOF:

The roof and roof areas shall not be used for any recreational purpose. Roof access shall be limited to the Association and its authorized representatives for Project maintenance purposes.

4.20. FLOOR COVERINGS:

No removal of carpet or carpet pads as originally installed in the Units, or replacement of the same with other flooring materials, shall be allowed without the prior written approval of the Board. No replacement of existing floor covering materials in any Unit (including first floor Units), including carpets or carpet pads, shall be allowed if the replacement materials do not equal or exceed all "Sound Transmission Class and Impact Isolation Class" values of the original floor covering materials. Without limiting the foregoing, floor areas in all Units that are above other Units, except kitchens and bathrooms, shall be covered with carpet or other material which provides equivalent or better sound insulation to the Unit below as the original materials installed in the Units by Declarant.

4.21. NO SMOKING:

Smoking shall not be permitted in the Common Area. The foregoing notwithstanding, smoking may be permitted on exterior Balconies (which are Exclusive Use Common Area); provided, however, that the Board shall have the power to adopt a Rule prohibiting smoking on private Balconies.

ARTICLE 5

IMPROVEMENTS

5.1. MAINTENANCE OF COMMON AREA:

5.1.1. In General:

The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of Common Area (excluding Exclusive Use Common Area). The Association shall keep the Common Area and Improvements thereon 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 the Common Area in accordance with (i) the Maintenance Manual, and (ii) commonly accepted maintenance practices for first class condominium projects.

5.1.2. Regular Inspections by Association: The Association shall regularly inspect all major components of the Common Area at least once each year. One of the primary purposes of the inspection shall be to determine how to extend the life of Common Area Improvements and to prevent damage to such Improvements resulting from the Association's neglect or the failure to properly and adequately Maintain.

5.1.3. Records: The Association shall keep appropriate records to document that it has performed all inspections and Maintained all Improvements in compliance with the Maintenance Manual.

5.1.4. Wood Destroying Pests:

The Association shall bear the costs of repair of Common Area occasioned by the presence of wood-destroying pests or organisms. The Association may cause the temporary removal of any occupant for such periods and at such times necessary for prompt, effective treatment of the wood-destroying pests or organisms. The cost of the temporary relocation shall be borne by the Owner(s) being relocated. The Association shall give notice of the need to temporarily vacate a Unit to the occupant and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupant will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

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

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

5.1.5. Satellite and Cable Facilities. The Association shall maintain all satellite, cable and other telecommunications conduit, including vertical conduit in the buildings to the point of lateral extension to particular Units. Subject to applicable state and federal laws and regulations, and subject to requirements for Association contracts set forth in the Bylaws, the Association shall have the authority (but not the obligation) to contract for and obtain, for the benefit of all of the Condominiums, cable television, cable or DSL communications, satellite television, and other similar telecommunication services.

5.1.6. Roof Garden. The Association shall ensure that at all times the podium roof gardens for the Project shall include at least 451 square feet of native/adaptive non-invasive plants.

5.1.7. Bicycle Storage. The Association shall maintain bicycle storage in the Project that can hold at least thirty-nine (39) bicycles and shall provide basic fencing for the same.

5.1.8. Vine Pockets. The Association shall be responsible for maintaining the vine planting areas and adjacent paving strips on the northern (King Street) side of the Building at 330 Berry Street (including those which encroach outside the property line of the Project), in accordance with Section 5.7 hereof.

5.1.9. Other. In addition to the foregoing, the responsibility to maintain certain specific Improvements within the Common Area shall be as follows:

(a) *Owner's Responsibilities:*

- (1) Unit exterior door hardware (but not painting or refinishing of door exterior);
- (2) cleaning of interior side of all windows and glass doors connected to the Unit, as well as the exterior side of windows and glass doors that can be accessed from Balconies or Patios; and
- (3) lighting fixtures and bulbs connected to the Unit meter (including lighting within Exclusive Use Common Areas).

(b) *Association's Responsibilities:*

- (1) Cleaning of window exteriors (other than windows entirely inside a Unit or those accessible from a Balcony or Patio);
- (2) painting or refinishing of Unit door exteriors; and
- (3) Balcony flooring, except flooring that is installed by an Owner (with the written consent of the Association pursuant to Article 12).

5.2. ALTERATIONS TO COMMON AREA (EXCLUDING EXCLUSIVE USE COMMON AREA):

5.2.1. Approval:

Except for actions taken by Declarant pursuant to Article 8 hereof, only the Association shall construct, reconstruct, refinish or alter any Improvement situated upon the Common Areas (excluding Exclusive Use Common Area). A proposal for any construction of or Alteration, maintenance or repair to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2. Funding:

Expenditures for Alterations, maintenance or repairs to an existing capital Improvement for which a reserve has been collected shall be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, Alteration, repair or maintenance of an Improvement for which no reserve has been collected or if the Reserve Account contains insufficient funds to cover the cost of the proposed Improvement.

5.2.3. Alterations Pursuant to Civil Code Section 1360:

An Owner may make Alterations to the Common Area and to Exclusive Use Common Area in accordance with the provisions and limitations set forth in Section 1360(a)(2) of the Civil Code. Any such Alterations to Common Area or Exclusive Use Common Area shall be made in accordance with the provisions of Article 12.

5.3. MAINTENANCE OF UNITS:

Each Owner shall keep the interior of his Unit, including all fixtures, appliances, appurtenances and fireplaces, if any, in good repair and condition, and in compliance with the provisions of the Maintenance Manual applicable to the Owners. Each Owner shall have the sole responsibility and the exclusive right, at his sole cost and expense, to:

(a) Maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the perimeter walls of his Unit and the bearing walls located within his Unit;

(b) Repair, paint, finish, alter, substitute, add or remove any fixtures and utility connections attached to ceilings, floors or walls, including, without limitation, fireplaces, toilets, showers, bathtubs, sinks, kitchen appliances, lighting and plumbing fixtures, telephone facilities, doors and windows within the Unit.

(c) Maintain and clean the interiors of any skylights, windows and other glass surfaces of his Unit;

(d) Maintain the doors on the interior of the Unit and doors leading to Common Area (except painting on the Common Area side of the door), including all hardware, locks, screens covering doors and windows of that Owner's Unit and all hardware and locks (all

new exterior doors, hardware, locks and screens must exactly match the item replaced unless otherwise approved in accordance with the provisions of Article 12 (Architectural and Landscaping Control);

(e) Maintain, repair and replace screens covering doors and windows of his Unit; and

(f) Maintain and control the lighting and temperature (thermal comfort) systems for his Unit. The Association will not be able to override and adjust these systems affecting Owner's Unit.

5.4. ALTERATIONS TO UNITS:

Owners may alter or remodel the interiors of their Units, including Common Area physically contained within the Unit (excluding load bearing walls), if the Alterations do not impair the structural integrity of the Unit or of the Building containing the Unit and if the Owner complies with all laws and ordinances regarding Alterations and remodeling. No Alteration of the floor coverings or walls of the Unit may be made which will result in an increase in sound transmission into any other Unit. Only soft-cover floors may be installed on floor levels located above and adjacent to any other Unit, except for replacement of any hard coverings in kitchen, bath or other areas where such hard coverings were originally installed by Declarant. A Unit may be modified by an Owner, at the Owner's sole expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which may be hazardous to such persons, subject to the limitations and requirements set forth in Section 1360 of the California Civil Code as that statute may be amended, revised or altered, and of this Declaration, the Bylaws and the Rules. Owners should consult the San Francisco Redevelopment Agency's Limited Equity Program with regard to the extent to which Alterations or other improvements to Units may be reimbursable on sale of the Unit.

5.5. MAINTENANCE AND REPAIR OF EXCLUSIVE USE COMMON AREA:

The responsibility for maintaining Exclusive Use Common Area shall be as follows:

5.5.1. Association's Responsibilities:

The Association shall paint and provide structural repair and replacement of the interior and exterior surfaces of any fences and/or railings enclosing Balconies and Patios. The Association shall also paint, repair and provide general cleaning and maintenance of Parking Areas, including licensed Parking Spaces.

5.5.2. Owners' Responsibilities:

Each Owner, at his sole expense, shall maintain, repair and otherwise care for all Improvements located within a Balcony or Patio.

5.6. ALTERATIONS TO EXCLUSIVE USE COMMON AREA:

No Alteration may be made to Exclusive Use Common Area until it has been approved by the Board and in accordance with the provisions of Article 12. The Board shall act on any written proposals for Alterations to Exclusive Use Common Area in accordance with the architectural control provisions contained in this Declaration and/or in the Rules. The cost of an Alteration to Exclusive Use Common Area shall be paid by the Owner who has obtained the approval, unless otherwise approved by the Members. Without limiting the foregoing, no alteration shall be made to the flooring of, or walls surrounding, any Balcony or Patio unless approved by the Board in accordance with Article 12, which approval may be withheld or denied in the discretion of the Board.

5.7. LANDSCAPING:

All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other first class residential subdivisions in the City. Specific restrictions on landscaping may be established in the Rules. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas, if any, shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.8. RIGHT OF ENTRY:

If an Owner fails to Maintain an Improvement which he or she is obligated to Maintain pursuant to this Declaration, and if the Association determines, after Notice and Hearing is given, that such Maintenance is necessary to preserve the attractiveness, quality, nature and value of the Project, the Association may Maintain the Improvement and charge the cost thereof to the Owner of the Unit as a Reimbursement Assessment. In order to effectuate the provisions of Sections 5.3 through 5.7, inclusive, and this Section, the Board may enter any Unit or any Exclusive Use Common Area whenever entry is necessary in connection with the performance of any Maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in an emergency.

5.9. DAMAGE AND DESTRUCTION OF COMMON AREA:

If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies and shall represent all Owners in such proceedings. The insurance proceeds shall be paid to and held by the Association for the benefit of the Owners and their Mortgagees.

5.9.1. Bids: Whenever an Improvement is to be Restored pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to Restore the damaged Common Area as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most

reasonable. The contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.

5.9.2. Sufficient Proceeds: The cost to Restore the damaged Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the cost to Restore the Common Area, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association. If the insurance proceeds are insufficient to Restore the damaged Common Area, the Board shall then add to the insurance proceeds all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged. If the total funds then available are sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored. If the aggregate amount of insurance proceeds and such Reserve Account funds are still insufficient to pay the total cost to Restore the damaged Common Area, 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 Section 6.4 (Limitations on Assessments). If the total funds then available are sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored. If the total funds then available are still insufficient to Restore the damaged Common Area, then the Board shall attempt to first impose an additional Special Assessment pursuant to Section 5.9.3 (Additional Special Assessment); secondly, use a plan of alternative reconstruction pursuant to Section 5.9.4 (Alternative Reconstruction) and lastly, purchase the damaged Units pursuant to Section 5.9.5 (Purchase of Units of Affected Owners). If the Members do not approve action under Sections 5.9.3 (Additional Special Assessment), 5.9.4 (Alternative Reconstruction), or 5.9.5 (Purchase of Units of Affected Owners), then the entire Project shall be sold by the Board pursuant to Section 5.9.6 (Sale of Entire Project); provided, however, that if only one of the Project Buildings is affected by the casualty or damage, the only the damaged Building shall be sold by the Board.

5.9.3. Additional Special Assessment: If the total funds available to Restore the damaged Common Area as provided in Section 5.9.2 (Sufficient Proceeds) are insufficient, then a meeting shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 5.9.2 (Sufficient Proceeds), is sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored. If the amount of the Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 5.9.2 (Sufficient Proceeds), is insufficient to Restore the damaged Common Area or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Section 5.9.4 (Alternative Reconstruction).

5.9.4. Alternative Reconstruction: The Board shall consider and propose plans to reconstruct the damaged Common Area making use of whatever funds are available to it pursuant to Section 5.9.2 (Sufficient Proceeds) and whatever funds, if any, are available to it pursuant to Section 5.9.3 (Additional Special Assessment). All proposals shall be presented to the Owners. If one hundred percent (100%) of the Owners whose Units were directly affected by the damage to Common Area ("Affected Owners") and a majority 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 Common Area 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 Association shall consider purchasing the Units of the Affected Owners pursuant to Section 5.9.5 (Purchase of Units of Affected Owners).

5.9.5. Purchase of Units of Affected Owners: If no plan of Alternative Reconstruction is agreed to within six (6) months after the date of the damage, then the Board shall seek to obtain the approval of all Affected Owners and their Mortgagees to the Association's purchase of the Condominiums of the Affected Owners. The purchase price ("**Purchase Price**") for each Condominium shall be the "Resale Affordable Price" of the Condominium immediately prior to the damage as such term is defined in the San Francisco Redevelopment Agency's Limited Equity Home Ownership Program documents ("**Resale Affordable Price**"). If a majority of the Members (other than Owners who, together with all of their Mortgagees, agree to have their Unit purchased) agree to the purchase, the Association shall purchase the Condominiums of the Affected Owners who, together with all of their Mortgagees, agree to the purchase. If there are insufficient funds to pay the Purchase Price for all Condominiums owned by Affected Owners who, together with all of their Mortgagees, agree to the purchase, then a Special Assessment shall be levied against all Owners (other than the Owner whose Units are to be purchased). The aggregate amount of the Special Assessment shall be the amount needed to pay the difference between the aggregate amount of available funds pursuant to Sections 5.9.2 (Sufficient Proceeds) and 5.9.3 (Additional Special Assessment) and the aggregate Resale Affordable Price of the Condominiums to be purchased.

5.9.6. Sale of Entire Project: If the aggregate amount of funds available to Restore the Common Area is insufficient to Restore the damaged Common Area, Alternative Reconstruction as defined in Section 5.9.4 (Alternative Reconstruction) cannot be agreed to, and the Owners did not approve a purchase pursuant to Section 5.9.5 (Purchase of Units of Affected Owners), then the Board shall be empowered to sell the entire Project, including all Units and the Common Area in their then present condition, on terms to be determined by the Board; provided, however, that if only one of the Project Buildings is affected by the casualty or damage, the Board shall have the power only to sell the damaged Building. If the entire Project or Project Building is sold, the proceeds from the sale, together with the insurance proceeds received and any balance of funds held by the Association, shall be distributed among those Owners who then own Condominiums in the Project (in the case of the sale of the Project) or in the Building (in the case of the sale only of a Project Building) and their respective Mortgagees in proportion to the respective Resale Affordable Price of the Condominiums immediately prior to the destruction, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board.

5.10. CONDEMNATION:

If all or any portion of the Project is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be paid either (i) as apportioned by court judgment, (ii) as apportioned among the Owners of the Common Area by agreement between the condemning authority and each of the Owners of the Common Area or (iii) to such Owners proportionately according to the respective Resale Affordable Price of their Condominiums immediately prior to the time of

condemnation, as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute Certificate or the equivalent, as selected by the Board. The Association shall represent the interests of the affected Owners; however, each Owner shall be entitled to obtain and be represented by legal counsel if the Owner desires.

5.11. MECHANICS' LIENS:

If a notice of mechanic's lien is filed against the Project for, or purporting to be for, labor or material alleged to have been furnished to or delivered for any Owner within the Project or at his Unit, the Owner shall immediately cause the lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall then levy a Reimbursement Assessment, which shall include any Additional Charges incurred, against the Owner(s) responsible for the existence of the lien. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary to properly protect the interests of the Owners.

ARTICLE 6

FUNDS AND ASSESSMENTS

6.1. COVENANTS TO PAY:

Declarant and each Owner in the Project covenant and agrees to pay to the Association the Assessments and any Additional Charges levied pursuant to this Article 6.

6.1.1. Liability for Payment:

The obligation to pay Assessments shall run with the land so that each successive record Owner of a Condominium shall in turn become liable to pay all such Assessments. No Owner may waive or otherwise escape personal liability for Assessments or release the Condominium owned by him from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each Assessment shall constitute a separate Assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the Assessment was levied and shall bind his heirs, devisees, personal representatives and assigns. Any Assessment not paid within fifteen (15) days after it becomes due is delinquent. The personal obligation of an Owner for delinquent Assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent Assessments. After an Owner transfers fee title of record to his Condominium, he shall not be liable for any charge thereafter levied against the Condominium.

6.1.2. Funds Held in Trust:

The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3. Offsets:

No offsets against any Assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2. REGULAR ASSESSMENTS

6.2.1. Payment of Regular Assessments:

Regular Assessments for each fiscal year shall be established when the Board

approves the budget for that fiscal year. 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. Regular Assessments shall commence for all Condominiums in the Project on the date which is the first day of the first month following the month in which the first Condominium is conveyed to an Owner and may commence prior to that date at the option of Declarant.

6.2.2. Budgeting of Regular Assessments:

Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing:

- (a) estimated revenue and expenses on an accrual basis;
- (b) a summary of the Association's reserves based upon the study conducted pursuant to Section 6.6.7 hereof, which shall be printed in bold type and shall include all of the following:
 - (1) the current estimated replacement cost, estimated remaining life, and estimate useful life of each Major Component;
 - (2) as of the end of each fiscal year for which the study is prepared: (A) the current estimate of the amount of cash reserves necessary to Maintain the Major Components; and (B) the current amount of accumulated cash actually set aside to Maintain the Major Components;
 - (3) the percentage that the amount determined for purposes of clause (2) of subparagraph (b), above, is of the amount determined for purposes of clause (1) of subparagraph (b), above; and
 - (4) the current deficiency in reserve funding expressed on a per unit basis;
- (c) a statement as to all of the following:
 - (1) whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;
 - (2) whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any Major Component or to provide adequate reserves therefor;
 - (3) the mechanism by which the Board will fund reserves to repair or replace major components, including Assessments, borrowing use of other assets, deferral of selected replacement or repairs, or other alternative mechanisms; and

(4) whether the Association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired;

(d) a general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to Major Components.

(e) a summary regarding alternative dispute resolution as required under Section 11.2 hereof, unless otherwise distributed in the manner specified in Section 5016 of the Corporations Code.

A copy of the operating budget shall be annually distributed to the Owners not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year. The summary of the Association's reserves disclosed pursuant to subparagraph (2) of this Section 6.2.2 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the Association's fiscal condition is not made inadmissible by this provision.

6.2.3. Summary of Budget Statement:

In lieu of the distribution of the statement as required by Section 6.2.2 (except 6.2.2(e), which must be distributed), the Board may elect to distribute a summary of the items listed in Section 6.2.2(a)-(d) to all Members with a written notice that the statement is available at the business office of the Association or at another suitable location within the boundaries of the Project and that copies will be provided upon request at the expense of the Association. If any Member requests copies of the statement, including the items listed in Section 6.2.2(a)-(d), to be mailed to the Member, the Association shall provide such copies to the Member by first class United States mail at the expense of the Association within five (5) days. The written notice that is distributed to each of the Members shall be in at least 10-point bold type on the front page of the summary of the statement.

6.2.4. Budget:

For the first fiscal year, the operating budget shall be based upon the budget accepted by the Department of Real Estate of the State of California and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the operating budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessment to be levied against the Owner's Condominium, not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year.

6.2.5. Allocation of Regular Assessments:

Those items in the budget designated as gas, insurance premiums, and reserves for painting and the replacement of the hot water heater, heating system and roof shall be allocated to and assessed among the Condominiums in the same proportion that the square footage of the Unit to be assessed bears to the total square footage of all Units subject to Assessment. Such

percentages are set forth in Exhibit "B" attached hereto. All other items in the budget shall be allocated to and assessed among all Owners equally. The Assessment for each Condominium shall include the charge(s) for the Parking Space(s) licensed to that Condominium.

6.2.6. Non-Waiver of Assessments:

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

6.3. SPECIAL ASSESSMENTS:

Subject to the limitations set forth in Section 6.4 below, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements; (ii) correcting an inadequacy in the Current Operation Account; (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area; or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be allocated and levied in the same manner as Regular Assessments, except that a Special Assessment for major repair or reconstruction of Common Area containing Units shall be based upon the ratio that the square footage of the floor area of the Unit to be assessed bears to the total square footage of the floor area of all Units in the Project.

6.4. LIMITATION ON ASSESSMENTS:

Except as otherwise required pursuant to this Section 6.4, the Association shall levy Regular Assessments and Special Assessments sufficient to perform its obligations under the Project Documents and California law. All Regular Assessments and Special Assessments levied by the Board shall be subject to the limitations and other provisions of Section 1366 of the California Civil Code or any successor statute (including the special voting and quorum requirements thereof), as such statute may be amended from time to time.

6.5. REIMBURSEMENT ASSESSMENTS:

The Association shall levy a Reimbursement Assessment against any Owner and his Condominium if a failure to comply with the Project Documents has (i) necessitated an expenditure of monies by the Association to bring the Owner or his Condominium into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given. Notwithstanding any other provision in the Project Documents expressly or impliedly to the contrary, Reimbursement Assessments, while characterized as "Assessments" hereunder, may not be enforced by any lien rights provided in this Declaration.

6.6. ACCOUNTS:

6.6.1. Types of Accounts:

Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the Assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital Improvements into the Reserve Account.

6.6.2. Current Operation Account:

All of the following may be paid from the Current Operation Account:

- (a) All costs of enforcing the provisions of the Project Documents;
- (b) Taxes and Assessments, if any, levied or assessed separately against the Common Area;
- (c) Sums necessary to discharge any lien or encumbrance, including taxes, levied against any Condominium which constitutes a lien against any portion of the Common Area;
- (d) Insurance premiums and costs for policies purchased for the benefit of the Association;
- (e) Water, sewer, garbage, electrical, gas, telephone and other necessary utility services for the Common Area, the Units and Exclusive Use Common Area to the extent such services are not separately metered or individually charged;
- (f) Costs of routine maintenance, repair and upkeep of Improvements in the Common Area; and
- (g) All other goods, materials, supplies, furniture, labor, services, maintenance, repairs or Alterations which the Association is authorized to secure and pay for pursuant to the terms of this Declaration or by law, other than those items that are to be paid for with funds from the Reserve Account.

6.6.3. Reserve Account:

Except as set forth in this Section 6.6.3, the Association shall not expend funds from the Reserve Account for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, Major Components for which the reserve was established. No portion of a reserve designated for a particular Major Component may be expended for any purpose other than the maintenance or replacement of that Major Component. Notwithstanding the foregoing, the Board may authorize

the temporary transfer of money from the Reserve Account to the Current Operating Account in order to meet short term cash flow requirements or other expenses, but only in compliance with Section 1365.5 of the California Civil Code. A Special Assessment under this Section shall be subject to the limitations set forth in Section 6.4. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

6.6.4. Notification of Use of Reserve Account for Litigation:

When the decision is made to use the Reserve Account or to temporarily transfer money from the Reserve Account to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

6.6.5. Account Reconciliation:

The Board shall do the following not less frequently than quarterly:

- (a) Review a current reconciliation of the Association's Current Operating Account(s);
- (b) Review a current reconciliation of the Association's Reserve Account(s);
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;
- (d) Review the most current account statements prepared by the financial institution where the Association has its Current Operating and Reserve Accounts;
- (e) Review an income and expense statement for the Association's Current Operating and Reserve Accounts.

6.6.6. Withdrawals from Reserve Account:

Withdrawal of funds from the Reserve Account(s) shall require the signatures of either;

- (a) two Directors of the Board; or
- (b) one Director of the Board and an officer who is not also a Director.

6.6.7. Reserve Studies:

At least once every three (3) years, the Board shall cause to be conducted a

reasonably competent and diligent visual inspection of the accessible areas of the Major Components as part of a study of the reserve account requirements of the Project, if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association excluding the Association's Reserve Account for that period. The Board shall review the study annually and shall consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review. The study required by this Section 6.6.7 shall at a minimum include:

(a) identification of the Major Components which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) identification of the probable remaining useful life of the Major Components identified in subparagraph (a) as of the date of the study;

(c) an estimate of the cost of repair, replacement, restoration or maintenance of each Major Component identified in subparagraph (a), above, during and at the end of its useful life;

(d) an estimate of the total annual contribution necessary to defray the cost to Maintain each Major Component identified in subparagraph (a), above, during and at the end of its useful life, after subtracting total reserves as of the date of the study.

For purposes of this Section 6.6.7, the term "reserve account "requirements" shall mean the estimated funds which the Board has determined are required to be available at a specific point in time to Maintain all Major Components.

6.7. ENFORCEMENT OF ASSESSMENTS:

6.7.1. Enforcement by Suit or Lien:

In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each Assessment provided for in this Declaration in any manner provided by law or in equity and, without limitation of the foregoing, by either or both of the following procedures.

(a) By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent Assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: At any time after the delinquency, the Association may elect to file and record in the Official Records of the County a claim of lien against the separate interest of the defaulting Owner (an "Assessment Lien") and to enforce (including by foreclosure) such Assessment Lien in accordance with and subject to the procedures set forth in California Civil Code Sections 1365.1, 1367.1 and 1367.4, or any successor statutes thereto, and as the same may be amended from time to time.

6.7.2. 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 such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent Assessments or may be levied against a Condominium as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

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

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with California Civil Code Section 1366(e)(2) (or successor statute thereto) to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by law; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00) whichever is greater; or such greater amount as may from time to time be allowed by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on all sums imposed in accordance with this Article 6, including the delinquent Assessment, reasonable costs of collection, reasonable attorneys' fees, and late charges, at an annual percentage rate to be established by the Board but in no event to exceed twelve percent (12%) interest, or such greater amount as may from time to time be allowed by law, commencing thirty (30) days after the Assessment becomes due; and

(e) Other: Any such other reasonable costs that the Association may incur in the process of collecting delinquent Assessments or sums.

6.7.3. Certificate of Satisfaction of Lien:

Within twenty-one (21) days following the payment or other satisfaction of a delinquent Assessment for which a Notice has been recorded pursuant to 6.7.2 above, the Association shall record or cause to be recorded in the County records a lien release, notice of rescission, or other certificate stating that the Assessment Lien has been satisfied and released, and shall provide to the Owner a copy of the Lien release or notice that the delinquent Assessment has been satisfied.

6.7.4. Assignment of Enforcement Rights:

The Association may not voluntarily assign or pledge the Association's right to collect payments of Assessments, or to enforce or foreclose a lien, to a third party, except when

the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

6.8. STATEMENT OF ASSESSMENT LIEN:

Within ten (10) days of a request from an Owner liable for Assessments, the Association shall furnish to that Owner a written certificate signed by an officer or authorized agent of the Association stating the amount of any Assessment and any Additional Charges secured by the lien upon his Condominium. A charge, not to exceed the reasonable costs of preparation and reproduction of the certificate, may be levied by the Board for the issuance of such certificate.

6.9. SUBORDINATION OF LIEN:

Notwithstanding any provision to the contrary, the liens for Assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage, or of any Institutional Mortgagee holding a Mortgage, made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium, or of any Mortgage held by an Institutional Mortgagee on a Condominium, any lien for Assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all Assessments, whether Regular or Special, charged to such Condominium after the date of such foreclosure sale, which lien shall arise, have the same effect, and be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the Assessment Lien provisions of this Declaration.

ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION

7.1. THE ORGANIZATION:

The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have such powers as are set forth in the Project Documents.

7.2. MEMBERSHIP:

Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member. Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be provided in the Project Documents.

7.2.1. Appurtenant to Ownership:

Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be provided in the Project Documents.

7.2.2. Voting Rights:

Voting rights shall accrue to an Owner once the Regular Assessment has been levied against the Owner's Condominium, but in no event before that time.

7.3. CLASSES OF MEMBERSHIP:

The Association shall initially have two (2) classes of Members.

7.3.1. Class "A" Members:

Each Owner, except Declarant, shall be a Class A Member. Only one (1) vote for each Unit owned by a Class A Member(s) may be cast. The vote for each Condominium shall be cast as a majority of co-Owners of the Condominium shall determine. Any vote cast by a single Member shall be deemed the authorized vote for that Condominium. If the majority of co-Owners present in person or by proxy at a meeting cannot agree as to how to cast the vote for their Condominium, no vote shall be cast for that Condominium. The power to cast a particular

Member's vote may be exercised by (i) the Member's conservator; (ii) the guardian of his estate; (iii) the parent(s) entitled to custody of a Member if the Member is a minor; or (iv) the executor or administrator of a deceased Member's estate if the Member's interest in the Condominium is subject to administration in his estate.

7.3.2. Class "B" Member:

Declarant shall be the sole Class B Member. Three (3) votes for each Condominium owned by a Class B Member(s) may be cast. Voting rights shall accrue to an Owner once the Regular Assessment has been levied against the Owner's Condominium, but in no event before that time. Class B Membership shall expire and shall be converted to Class A membership on the first to occur of the following events:

(a) the total outstanding votes of Class A Members equal the total outstanding votes of Class B Members, or

(b) the date which is the second anniversary of the close of escrow for the first conveyance of a Condominium under the original Public Report for the Project.

7.3.3. Conversion of Class B Membership:

Upon the conversion of Class B membership to Class A membership, but while Declarant still owns one or more Condominiums in the Project, each provision of the Project Documents which requires approval by each class of Members shall instead require: (i) the approval of a majority of all Members; and (ii) the approval of a majority of all Members other than Declarant. After Declarant no longer owns a Condominium in the Project, each provision of the Project Documents which requires the approval of a majority of each class of Members shall instead require the approval of a majority of all Members.

7.4. POWERS, DUTIES AND AUTHORITY OF THE ASSOCIATION:

The Association shall have the powers set forth in the Articles, Bylaws and this Declaration. In addition to the duties and powers enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following duties and obligations:

7.4.1. Common Area Maintenance:

The Association shall Maintain the Common Areas, including the Improvements, utilities and facilities located thereon, as well as specific portions of Exclusive Use Common Area as specifically enumerated in Article 5 hereof, all in accordance with the Maintenance Manual, as applicable. The Association shall keep an updated version of the Maintenance Manual on file at all times and make such Maintenance Manual available to all Owners during normal business hours or under reasonable circumstances. The Association shall keep appropriate records to document that it has performed all inspections and maintained all Improvements in compliance with the Maintenance Manual.

7.4.2. Easements:

The Association shall have the power to grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Areas and the Units.

7.4.3. Discharge of Liens:

The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of said lien. Prior to any Board decision to discharge a lien, the Owner shall be given written notice and an opportunity for Notice and Hearing.

7.4.4. Assessments:

The Association shall fix, levy, collect and enforce Assessments as set forth in Article 6 hereof.

7.4.5. Payment of Expenses:

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

7.4.6. Acquisition of Property:

The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build up, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. However, except with the vote or written assent of a majority of the voting power of the Association, including a majority of the voting power residing in members other than Declarant, the Board is prohibited from incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Any sale of property or improvements owned, directly or indirectly, by the Association for the benefit of Units and Owners shall be subject to the requirements of Article 9.

7.4.7. Limitation of Liability:

The Purpose of the Association is for the management and maintenance of the Project, and the Association shall not be responsible for the safety of Owners within the Project, except in the event of active gross negligence or willful misconduct of its Directors or officers.

7.4.8. Rules and Regulations:

The Board shall have the power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules in compliance with the provisions of Section 1357.100

et seq. of the California Civil Code and the provisions set forth below in this Section 7.4.8.

(a) Effective Date: All changes to the Rules will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Project or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

(b) Areas of Regulation: The Rules may concern use of the Units, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules are enforceable only to the extent they are consistent with the Articles, Bylaws, this Declaration, as amended.

(c) Limits on Regulation: The Rules must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Units of the kinds normally displayed in condominiums shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Unit. No modification to the Rules may require an Owner to dispose of personal property that was in a Unit before adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to (i) subject Owners who take title to the Unit after the modification is adopted, or (ii) clarifications to the Rules.

7.4.9. Notices to Declarant:

The Association shall provide to Declarant all notices described in Section 7.6 hereof. In addition to the notices described in Section 7.6, the Board shall provide Declarant with all other Association notices, reports, summaries, budget pro-formas and statements, assessment notices under Section 6.2, expenditure of Reserves notices under Section 6.6 and copies of all other notices required to be given to the Owners by other provisions in this Declaration and in the Bylaws, including, without limitation, notices, agendas and minutes of all Board and Association Member meetings.

7.4.10. Parking Space Charges:

The Association shall charge a fixed amount for the use of each Parking Space as part of the Association Assessments for each Condominium. The initial charge shall be established by the Declarant on or before assignment of the first parking License. From time to time, the Association may increase or decrease the amount of the charge for the use of a Parking Space; provided, however, that the minimum charge shall be \$100 per month, adjusted not less frequently than every 5 years based upon a cost of living or consumer price index reasonably chosen and applied by the Board in its discretion. The charge for each Parking Spaces shall always be the same charge as for each other Parking Space.

7.5. INSURANCE:

The Board shall obtain and maintain insurance as provided in this Section.

7.5.1. General Provisions and Limitations:

All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

- (a) Underwriter: All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.
- (b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.
- (c) Certificate of Insurance: If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and his Mortgagee which shall specify the amount of such insurance attributable to the particular Owner's Condominium.
- (d) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.
- (e) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.
- (f) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:
 - (i) a waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;
 - (ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;
 - (iii) that no policy may be cancelled, invalidated or suspended on account of the acts of any one or more individual Owners;
 - (iv) that no policy may be cancelled, invalidated or suspended on account of the conduct of any Manager, Director, officer or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its

Manager, any Owner or Mortgagees;

(v) that any "other insurance" clause in any policy excludes individual Owners' policies from consideration;

(vi) that no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Eligible Holder;

(vii) an agreed amount endorsement; and

(viii) an inflation guard endorsement.

(g) Term: The period of each policy shall not exceed three (3) years, provided the policy permits short rate cancellation by the insureds.

(h) Annual Review: The Board shall review the adequacy of all insurance at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

(i) Additional Insurance by Member: The insurance policies carried by the Association are not intended to cover any Improvement or any personal property situated within an individual Unit. Therefore, each Owner is responsible for determining and obtaining the type and amount of insurance needed to insure all Improvements (which existed at the time of purchase of the Unit and which are subsequently added) and personal property located within the Owner's Unit. If a policy carried by the Association offers coverage for a claim made by an Owner as a result of damage to any Improvement or personal property within a Unit, the Owner shall be responsible for paying any deductible, if the Owner wishes to adjust the claim under the Association's policy. No Owner shall be entitled to exercise his right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.5.2. Types of Coverage:

At least the following kinds and amounts of insurance shall be obtained:

(a) Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements (and including portions of Units considered part of the building structure for insurance purposes), including Common Area fixtures and Building service equipment, against loss or damage by fire or other casualty, in an amount equal to one hundred percent (100%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than **Three Million Dollars (\$3,000,000)** per occurrence covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about any Unit or Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Directors and Officers: Liability and errors and omissions insurance covering all past, present and future directors and officers of the Association, the amount of which shall at all times not be less than the minimum amounts required by California Civil Code §§1365.7 and 1365.9, as amended from time to time, including any successor statutes;

(d) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(e) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other persons as a majority of the Members may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Members.

7.6. NOTICES TO OWNERS:

7.6.1. Assessments and Foreclosure Notice:

Prior to the start of each fiscal year, the Association shall prepare and distribute to all Members:

(a) the written notice regarding assessments and foreclosure required under California Civil Code Section 1365.1 (or any successor statute), as amended from time to time

(b) a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Condominiums required by California Civil Code Section 1365(e) (or successor statute);

(c) a notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366;

(d) a description of any internal dispute resolution process adopted by the Association or, if no such process has been adopted, a statement that the Association's informal internal dispute resolution process is that provided in California Civil Code Section 1369.540 (or successor statute);

(e) a summary of the reserve funding plan adopted by the Board as specified in Civil Code Section 1365.6(e) (or successor statute).

7.6.2. Insurance Summary:

The Association shall prepare and distribute to all Members a notice setting forth the information required under Section 1365(f) of the California Civil Code (or any successor statute), as amended from time to time. The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the insurance policies described in such notice have lapsed, been canceled, are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in the notice required by this Section 7.6.2, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

7.6.3. Alternative Dispute Resolution Summary:

The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1369.510 *et seq.* (or successor statute), with specific reference to those sections. The summary shall include the following language:

"Failure by any Member of the Association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents or the applicable law."

The summary shall be provided either at the time the pro forma budget required by Section 6.2.2 hereof is distributed or in the manner specified in Section 5016 of the Corporations Code. In addition, any request for resolution sent to an Owner by the Association or any other Owner pursuant to California Civil Code Section 1369.520(b) or this Section shall include a copy of California Civil Code Section 1369.510 *et seq.*

7.7. ENFORCEMENT OF BONDED OBLIGATIONS:

When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions shall apply to initiating action to enforce the obligations of Declarant and the surety under the Bond:

7.7.1. Action by Board:

The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

7.7.2. Action by Members:

If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the vote of fifty-one percent (51%) of the total voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

7.8. NOTICE AND HEARING:

7.8.1. Procedure:

If a Member appears to be in violation of any provision of the Project Documents and the provisions of any of the Project Documents require that Notice and Hearing be provided, and where the Board determines it should meet to consider or impose discipline upon a Member, the Board shall give written notice to the Member, either by personal delivery or by first class mail. The written notice shall be given at least ten (10) days prior to the date set for the meeting and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notice or to the address of the Member's Condominium if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board. The notice shall specify, at a minimum, the date time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined (including any other appropriate information), and a statement that the Member has a right to attend the meeting and may address the Board at the meeting. The Board shall meet in executive session if requested by the Member being disciplined. If the Member's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Board may vote to levy a Reimbursement Assessment if the Board finds that a violation has occurred.

7.8.2. Determination:

7.8.3. At or following the hearing concerning disciplinary action against a Member, the Board (i) shall determine whether a violation has occurred and, if so, (ii) may impose a Reimbursement Assessment or take such other disciplinary action as may be appropriate. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days following the action. In the case of the imposition of a Reimbursement Assessment, the Reimbursement Assessment shall become effective not less than five (5) days following delivery of such notice. The determination of the Board shall be final. However, nothing herein shall be construed to prevent the Board from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

7.8.4. Effectiveness of Disciplinary Action:

A disciplinary action imposed by the Board shall not be effective against a Member unless the Board fulfills the requirements of this Section 7.8 and any additional requirements contained in Section 1363(h) of the California Civil Code, as amended from time to time.

7.9. TAX-EXEMPT STATUS:

The Board shall cause any annual election for tax-exempt status required under federal or state law to be filed timely and shall cause the Association to comply with the statutes, rules and regulations adopted by federal and state agencies pertaining to such exemptions.

ARTICLE 8

DEVELOPMENT RIGHTS

8.1. LIMITATIONS OF RESTRICTIONS:

Declarant is undertaking the work of developing Condominiums and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2. RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION:

Until the **third (3rd)** anniversary of the original issuance of the Public Report for the Project, Declarant, its contractors and subcontractors shall have the right to:

8.2.1. Access:

Obtain reasonable access over and across the Common Area of the Project or do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and

8.2.2. Construction:

Erect, construct and maintain on the Common Area of the Project or within any Unit owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease or otherwise.

8.3. SIZE AND APPEARANCE OF PROJECT:

Declarant shall not be prevented from (a) altering Improvements or Declarant's construction plans or designs; (b) modifying the development plan for the Project, including changing or reconfiguring Unit boundaries shown on the Condominium Plan prior to sale of the affected Condominiums pursuant to a Public Report or constructing Condominiums of larger or smaller sizes, values or types; (c) changing the exterior appearance of Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

8.4. MARKETING RIGHTS:

8.4.1. Generally:

Subject to the limitations of this Section, and for a period not exceeding **three (3)** years following the original issuance of the Public Report for the Project, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Units or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Condominiums; (ii) make reasonable use of the Common Area and facilities for the sale of Condominiums; and (iii) conduct its business of disposing of Condominiums by sale, lease or otherwise. Following the expiration of such **three (3)** year period, Declarant may continue to maintain model units within the Project.

8.4.2. Agreement After One Year:

Section 8.3.1 notwithstanding, if one year following the first conveyance of a Condominium to an Owner, Declarant requires exclusive use of any portion of the Common Area for marketing purposes, Declarant may use the Common Area only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area and any Units owned by Declarant as an Owner.

8.5. AMENDMENT:

After the expiration of Class B membership, the provisions of this Article may not be amended without the consent of Declarant until either (i) all of the Condominiums in the Project owned by Declarant have been sold or (ii) **three (3)** years after the original issuance of the Public Report for the Project, whichever occurs first. The foregoing notwithstanding, for so long as Declarant owns any portion of the Project, Declarant may unilaterally amend this Declaration by recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of the Veterans Administration, the Federal Housing Administration, the California Department of Real Estate, Fannie Mae, Freddie Mac or Ginnie Mac, (b) comply with any laws, and (c) correct any typographical errors.

8.6. PARTICIPATION IN ASSOCIATION:

The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until Declarant notifies the Association in writing that it waives its right to receive future notices, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings. Such

representative of the Declarant shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

8.7. DECLARANT APPROVAL OF ACTIONS:

No amendment of this Article may be adopted by the Association without the approval in writing of Declarant. Further, until Declarant no longer owns any Condominiums in the Project, the following actions, before being undertaken by the Association, must be first approved in writing by Declarant:

- (a) any amendment or action requiring the approval of First Mortgagees;
- (b) the levy of a Special Assessment for the construction of new facilities not constructed on the Common Area by Declarant;
- (c) any significant reduction of Association maintenance or other services; or
- (d) any modification or termination of any provision of the Project Documents benefiting Declarant or which would impair or diminish Declarant's right to complete the Project or to sell or lease dwellings therein.

ARTICLE 9

RIGHTS OF MORTGAGEES

9.1. CONFLICT:

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

9.2. LIABILITY FOR UNPAID ASSESSMENTS:

Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the 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.

9.3. RESERVE FUND:

The Reserve Account established under Section 6.6 hereof shall be maintained at a level sufficient to replace the Improvements which the Association is obligated to maintain.

9.4. TERMINATION OF CONTRACTS AND AGREEMENTS:

9.4.1. Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Subsection, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

9.4.2. Any agreement for professional management of the Project or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) 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.

9.5. NOTICE TO ELIGIBLE HOLDERS:

An Eligible Holder is entitled to timely written notice of:

(a) Any condemnation loss or casualty loss which affects either a material portion of the Project or the Condominium on which the Eligible Holder holds a Mortgage;

(b) Any delinquency in the payment of Assessments or charges owed by the Owner of a Condominium which is subject to a Mortgage held by the Eligible Holder 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 in Section 10.2; or

(e) Any default by an Owner-mortgagor of a Condominium in the performance of his obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

9.6. INSPECTION OF BOOKS AND RECORDS:

Upon request, any Owner or Institutional Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours or under other reasonable circumstances. Notwithstanding the foregoing, the Association may withhold or redact information from the accounting books and records and the minutes of proceedings for the reasons set forth in Civil Code Section 1365.2(d)(1) or successor statute thereto. Except as provided by the attorney-client privilege, the Association may not, however, withhold or redact information concerning the compensation paid to employees, vendors or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number or other personal information.

9.7. FINANCIAL STATEMENTS:

The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same to each Member within one hundred twenty (120) days after the close of each fiscal year. Upon receipt of a written request from a Member or an Institutional Mortgagee for the financial statement, the Board shall promptly cause the most recent financial statement to be sent to the requesting Member or Institutional Mortgagee.

9.8. TERMINATION OF PROJECT:

Except as provided by statute in the case of condemnation or substantial loss to Units and/or the Common Area, any decision, by act or omission, to abandon or terminate the

legal status of the Project as a condominium project shall require:

(a) The approval of sixty-seven percent (67%) of the Institutional Mortgagees who hold First Mortgages, based on one (1) vote for each First Mortgage owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders who hold First Mortgages, based on one (1) vote for each First Mortgage owned, if Section 9.8.1, above, is not applicable.

9.9. ACTIONS REQUIRING CONSENT:

Except as provided by statute in the case of condemnation or substantial loss to Units and/or Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees who hold First Mortgages, based on one (1) vote for each First Mortgage owned, or sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) Use hazard insurance proceeds for losses to any Project property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project property;

(b) Partition or subdivide any Condominium;

(c) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause);

(d) Change the pro rata interests or obligations of any individual Condominium for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards.

9.10. PARTIAL CONDEMNATION OR DESTRUCTION:

(a) In the event a portion of the Project is condemned, 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 Project unless fifty-one percent (51%) of the Eligible Holders who hold First Mortgages, based on one (1) vote for each First Mortgage owned, approve the taking of other action by the Association.

(b) After a partial condemnation or partial destruction of the Project, no reallocation of interests of Owners in the Common Area may be effected without the prior written approval of sixty-seven percent (67%) of the Institutional Mortgagees who hold First Mortgages on all remaining Condominiums, whether existing in whole or in part, based on one

(1) vote for each First Mortgage owned.

9.11. MORTGAGE PROTECTION:

No breach of any of the covenants, conditions and restrictions or any enforcement of the lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage or other Mortgage held by an Institutional Mortgagee, made in good faith and for value on any Condominium, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

ARTICLE 10

AMENDMENT OF DECLARATION

10.1. AMENDMENTS PRIOR TO CONVEYANCE OF FIRST CONDOMINIUM:

Prior to the conveyance of the first Condominium, the Bylaws and this Declaration may be amended by Declarant alone. After the conveyance of the first Condominium, the Bylaws and this Declaration may be amended in accordance with the following provisions:

10.2. PRECEDENCE OF ARTICLE 9:

With respect to any action to be taken under this Article 10 which is also governed by (i) the provisions of Article 9 that require a specified vote of Owners and/or Mortgagees, (ii) the provisions of Article 8 that require the consent of the Declarant for any amendment, or (iii) the provisions of Article 13 that require the consent of the Declarant for any amendment, the requirements of such Articles must be satisfied before action may be taken under this Article 10. After the requirements of Article 8, 9, or 13, as applicable, have been satisfied, a vote to amend this Declaration in compliance with this Article 10 may then be taken.

10.3. AMENDMENT OF CERTAIN PROVISIONS:

The vote or written consent of sixty-seven percent (67%) of each class of Members and fifty-one percent (51%) of the Eligible Holders who hold First Mortgages, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting;
- (b) Assessments, assessment liens or the priority of assessment liens;

- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Responsibilities for maintenance and repair of any portion of the Project;
- (e) Reallocation of interests in the Common Area or Exclusive Use Common Area, or the rights to use the Common Area;
- (f) Convertibility of Units into Common Area or of Common Area into Units;
- (g) Insurance policies of fidelity bonds;
- (h) Leasing of Condominiums;
- (i) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium;
- (j) A decision by the Association to establish self-management when professional management has been required previously by the Project Documents or by an Eligible Holder;
- (k) Any change in the primary purposes to which any Unit or the Common Area is restricted;
- (l) Restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents; or
- (m) The provisions of Section 6.9, Article 9 and this Section 10.3.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within sixty (60) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

10.4. AMENDMENT OF RIGHTS OF ENTRY:

The provisions of Sections 3.4.9 (Association's Easements), 3.4.10 (Right of Entry to Inspect), 3.4.11 (Right of Entry to Perform Work) and this Section 10.4 may not be amended nor shall other provisions be adopted that purport to supercede them without the consent of Declarant.

10.5. AMENDMENT OF OTHER PROVISIONS OF DECLARATION:

Any other provisions of this Declaration may be amended by the vote or written consent of the record Owners constituting not less than sixty-six and two-thirds percent (66-2/3%) of each class of Members; provided, however, that the voting power necessary to amend a specific provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

10.6. RECORDATION OF AMENDMENT:

Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (a) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (b) an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.

ARTICLE 11

ENFORCEMENT OF DECLARATION AND OWNER DISPUTE RESOLUTION

11.1. ENFORCEMENT:

11.1.1. Rights to Enforce:

The Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action (subject to Section 11.2 hereof), suspend an Owner's voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed Two Hundred Dollars (\$200.00) or such other standard maximum amount as may be approved by fifty-one percent (51%) of each class of Members; provided, however, that such fine shall not be enforceable by any lien provisions of this Declaration. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his individually owned Unit, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, a decision pursuant to an alternative dispute resolution procedure or a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

11.1.2. Policy for Monetary Penalties:

Notwithstanding anything to the contrary in the Project Documents, if the Board establishes a policy or schedule for the imposition of fines, monetary penalties or Reimbursement Assessments for violation of the Project Documents by Owners or their Invitees, the Board shall comply with the requirements of California Civil Code Section 1363, as amended from time to time.

11.1.3. Violation of Law:

The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which violation creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation by an Owner of the Project Documents by making such violation subject to any or all of the enforcement procedures set

forth in this Declaration, provided that the Association complies with the Notice and Hearing requirements herein.

11.2. OWNER DISPUTE RESOLUTION:

11.2.1. Submission to Alternative Dispute Resolution:

Unless the applicable time limitation for commencing a legal action would run within one hundred twenty (120) days, then prior to the filing of any civil legal action by either the Association or an Owner solely for declaratory, injunctive or writ relief, or for such relief in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000) (or such other amount as may be specified by California Civil Code Section 1369.520, as amended from time to time), related to the enforcement of the Project Documents, but not including Assessment disputes (except as required by law) or small claims actions, the parties shall endeavor to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration in accordance with the provisions of California Civil Code Section 1369.510 *et seq.*, or any successor statutes thereto, as such sections may be amended from time to time.

11.2.2. Application of Civil Code Section 1369.510:

In the event of any conflict between this Section 11.2 and Section 1369.510 *et seq.* of the California Civil Code, or any successor statutes thereto, as amended from time to time, the provisions of Section 1369.510 *et seq.* of the California Civil Code shall control.

11.2.3. Inapplicability to Declarant Disputes:

This Section 11.2 shall not apply to any dispute that is subject to the provisions of Article 13 hereof (Disputes with Declarant Parties).

11.2.4. Civil Code Section 1363.810:

Without limiting the foregoing, disputes between the Association and a Member(s) involving respective rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under this Declaration are also subject to the requirements contained in California Civil Code Sections 1363.810 *et seq.*

11.3. REMEDIES CUMULATIVE:

Each remedy provided by this Declaration is cumulative and not exclusive.

11.4. NONWAIVER:

The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

ARTICLE 12
ARCHITECTURAL AND LANDSCAPING CONTROL

12.1. APPLICABILITY:

12.1.1. Generally:

Except as otherwise provided in this Declaration, proposals for Alterations are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

12.1.2. Exceptions:

The provisions of this Declaration requiring architectural approvals do not apply to repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing or replacing any Improvement with the same materials. The Architectural Standards may establish exceptions from time to time.

12.1.3. Declarant Exemption:

The provisions of this Declaration requiring architectural approvals do not apply to the construction or re-construction of any Improvements by Declarant, its agents, contractors or employees.

12.1.4. Relationship to Governmental Approvals:

Proposals for Alterations may also be subject to review and approval by state or local governmental entities or agencies. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

12.2. RESERVATION TO DECLARANT:

Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Declarant on the

Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

12.3. MEMBERS:

The Architectural Committee ("**Committee**") shall consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by Declarant need not be Members of the Association. All members will serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the Project. After the date which is one (1) year from the date of issuance of the Public Report for the Project and until the conveyance of ninety percent (90%) of all Condominiums or the fifth (5th) anniversary of the issuance of the Public Report for the Project, whichever first occurs, the Board will have the power to appoint one member of the Committee and Declarant may appoint the remaining members of the Committee. Thereafter, the Board shall appoint all of the members of the Committee or dissolve the Committee as provided in Section 12.2 (Reservation to Declarant), above. Upon the conveyance of one hundred percent (100%) of all Condominiums, the term of any remaining members appointed by Declarant will terminate and replacement members shall be appointed by the Board. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

12.4. DUTIES AND POWERS:

12.4.1. Duties:

The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence or wall detail, and other features of the proposed Improvements.

12.4.2. Powers:

The Committee may adopt procedures for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

12.4.3. Consultants:

With the consent of the Board, the Committee may hire and the Association shall

pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

12.5. APPLICATION FOR APPROVAL OF IMPROVEMENTS:

Any Owner, except Declarant and its designated agents, who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

12.6. BASIS FOR APPROVAL OF IMPROVEMENTS:

As conditions precedent to approval of any matter submitted to it, the Committee must ordinarily be able to find that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed Alteration will be aesthetically consistent with the other Improvements in the Project as to harmony of exterior design, landscaping, color schemes, exterior finishes, visibility with respect to existing structures and environment, and placement of structures with respect to topography and finished grade elevation.

12.7. FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS:

All approvals, conditional approvals and denials must be in writing. Any proposal which has not been rejected in writing within sixty (60) days from the date of submission will be deemed approved. Any denial of a proposal must (a) state the reasons for the decision and (b) if the decision was made by the Committee (rather than the Board), notice of the appeal rights provided in Section 12.12 (Appeal of Decision of Committee) of this Declaration.

12.8. WORK:

Upon approval of the Committee, the Owner must diligently proceed with the commencement and completion of all work so approved. Completion of the work approved must occur within one (1) year following the approval of the work unless the Committee grants an extension. This Section shall not be interpreted to extend any other time period imposed by this Declaration. If the Owner fails to complete the work within the required time period, the Committee may notify the Owner in writing of the non-compliance and proceed in accordance with the provisions of Section 12.10 (Failure to Remedy the Non-Compliance).

12.9. DETERMINATION OF COMPLIANCE:

Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance made as follows:

12.9.1. Notice of Completion:

Upon the completion of any work performed by an Owner for which approval was required, the Owner must give written notice of completion to the Committee.

12.9.2. Inspection:

Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 12.8 (Work), above, a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

12.10. FAILURE TO REMEDY THE NON-COMPLIANCE:

If the Committee has determined that an Owner has not constructed an Improvement consistently with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

12.11. WAIVER:

Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

12.12. APPEAL OF DECISION OF COMMITTEE:

This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration disputes the jurisdiction or powers of the Committee, the interpretation or application of an Architectural Standard or a decision of the Committee applicable to the denial or conditional approval of the Owner's application for a proposed Alteration (collectively referred to as "**Decision**"), that Owner may appeal such Decision to the Board. Any request to the Board for appeal of a Decision must be written. Within twenty (20) days of receipt by the Board of an Owner's written appeal request, the Board shall notify the Owner of the time, date

and place of the Board meeting at which the appeal of the Decision of the Committee will take place. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Condominium if no other address has been provided. After the meeting has taken place, the Board shall notify the Owner of its determination. The determination of the Board shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

12.13. NO LIABILITY:

If members of the Committee have acted in good faith, neither the Committee nor any member will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

12.14. EVIDENCE OF APPROVAL OR DISAPPROVAL:

After a determination of compliance is made pursuant to Section 12.9 (Determination of Compliance), the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination must be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Committee ("**Notice of Approval**") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Committee ("**Notice of Disapproval**"). A Notice of Disapproval must also identify the particulars of the non-compliance. Any successor in interest of the Owner will be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner must disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination will be conclusive as between the Association, the Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board must do so within sixty (60) days of its receipt of the request.

ARTICLE 13

RESOLUTION OF DISPUTES WITH DECLARANT PARTIES

13.1. RESOLUTION OF WARRANTY CLAIMS:

13.1.1. Acknowledgement of Warranty: It is recognize that Declarant and each first purchaser of a Condominium (as to such Condominium), and Declarant and the Association (as to the Common Area), entered into express limited warranties (each a "Warranty"), which apply to each Unit and the Common Area, respectively. Each first purchaser of a Condominium from Declarant, in connection with such purchaser, consented to and ratified the Association's acceptance of the Common Area Warranty. Notwithstanding anything contained in this Declaration, any and all claims or disputes covered by or arising under a Warranty shall be made and resolved as set forth in the Warranty, including, without limitation, any alternative dispute resolution provisions contained therein. Each Owner and the Association shall be required to follow the procedures and requirements set forth in the applicable Warranty. Any and all matters and disputes not arising out of or covered by the Warranty or the first purchase agreement for the Condominium shall be handled in accordance with the provisions and procedures set forth in Section 13.2 herein. In the event of any conflict between this Declaration and the Warranty, the Warranty shall prevail.

13.1.2. Application of SB 800: California law, at Civil Code Sections 895 through 945.5 (commonly known as "SB 800") provides for standards of construction and functionality relating to Improvements in the Project, as well as procedures for making claims, time limits for bringing certain actions, and various other obligations of a buyer and a builder of a residence. Chapter 4 of SB 800 contains certain non-adversarial procedures intended to facilitate resolution of disputes between parties. SB 800 allows Declarant to opt out of the Chapter 4 claims procedures of SB 800 and to use alternative non-adversarial contractual provisions to attempt to resolve these disputes. DECLARANT HEREBY INFORMS ALL OWNERS AND THE ASSOCIATION THAT DECLARANT HAS ELECTED NOT TO ENGAGE IN, FOLLOW, NOR BE BOUND BY, THE NON-ADVERSARIAL PROVISIONS SET FORTH IN CHAPTER 4 OF SB 800. INSTEAD, DECLARANT ELECTS TO USE SUCH ALTERNATIVE NON-ADVERSARIAL PROCEDURES AS ARE SET FORTH IN THE APPLICABLE WARRANTY OR IN ITS PURCHASE AGREEMENT WITH EACH OF THE FIRST OWNERS OF UNITS. The Warranty is not an "enhanced protection agreement" within the meaning of SB 800.

13.2. ALTERNATIVE DISPUTE RESOLUTION PROVISIONS:

Except as set forth in Section 13.1, above, any claims or disputes between Declarant or Declarant Party (as defined in Exhibit "C," attached), on the one hand, and any Owner and/or the Association on the other hand arising out of or in any way relating to the Project, any real property or Improvements in the Project, the Declaration, a purchase and sale contract between Owner and Declarant for the purchase and sale of a Condominium, or regarding the condition of the Units and/or the Common Area, or the design or construction of any portion of the Project, including without limitation construction defects, surveys, soils

conditions, grading, specifications, installation of Improvements, or disputes which allege strict liability, negligence or breach of implied warranties as to the condition of the Units, the Common Area or other portions of the Project, shall be resolved in accordance with the Declarant ADR Provisions set forth in Exhibit "C," attached hereto and incorporated herein by this reference.

13.3. REQUIRED VOTE TO MAKE CLAIM:

Prior to filing a claim pursuant to the Declarant ADR Provisions, the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than fifty-one percent (51%) of the Association's voting power (excluding the voting power of Declarant).

13.4. CIVIL CODE SECTION 1369.510 ET SEQ.:

This Article 13 governs only the resolution of Disputes with Declarant Parties (as defined in the Declarant ADR Provisions), on the one hand, and the Association or one or more Owners, on the other hand. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1369.510 *et seq.*, or any successor statute. Each party in a Dispute with Declarant parties shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees or costs, except to the extent provided under California Civil Code Section 1369.510 *et seq.*

13.5. AGREEMENT TO METHOD OF RESOLVING DISPUTES

DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE 13 AND THE DECLARANT ADR PROVISIONS TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 13, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.

13.6. AMENDMENT OF ARTICLE.

Notwithstanding anything in this Declaration to the contrary, without the express prior written consent of Declarant, this Article 13 may not be amended for a period of twenty years from the effective date of this Declaration.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1. TERM OF DECLARATION:

This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50%) of the Owners determines that this Declaration shall terminate.

14.2. CONSTRUCTION OF PROVISIONS:

The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of Section 1350, et seq. of the California Civil Code.

14.3. DECLARATION IS BINDING:

This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

14.4. SEVERABILITY OF PROVISIONS:

The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

14.5. GENDER, NUMBER AND CAPTIONS:

As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

14.6. RESALE OF CONDOMINIUM:

Upon the resale of any Condominium by any Owner, the Owner shall supply to the buyer of the Condominium a copy of each of the Project Documents. The Association may charge the buyer of a Condominium a fee in connection with the transfer of the Condominium, which fee shall not exceed the actual cost to the Association of changing its records.

14.7. EXHIBITS:

All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

14.8. CONFLICT:

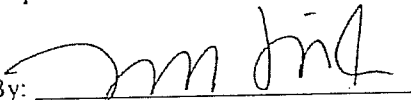
In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

DECLARANT:

BERRY STREET, LLC,
a California limited liability company

By: BRIDGE HOMES, INC.,
a California nonprofit public benefit
corporation, its Member/Manager

By: 
Name: Lydia Tan
Its: Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

On June 2nd, 2009 before me, Angela Tsang, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Lydia Tan
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Angela Tsang
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Covenants, Conditions and Restrictions of Mission Walk, A Condominium Project

Document Date: March 16, 2009 Number of Pages: THE Eighty-Five (85)

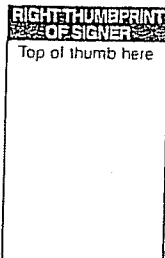
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

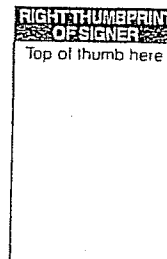
Signer Is Representing: _____



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



EXHIBITS

A - Interests in Common Area (3.3)

B - Allocation of Regular Assessments (6.2.5)

C - Alternative Dispute Resolution (Article 13)

EXHIBIT A

Interests in Common Area

330 BERRY STREET

<u>UNIT NUMBER</u>	<u>UNDIVIDED PERCENTAGE INTEREST</u>
330-100	1.96 %
330-101	2.34 %
330-102	1.72 %
330-200	1.41 %
330-202	1.81 %
330-204	1.51 %
330-206	1.50 %
330-207	1.65 %
330-220	1.52 %
330-221	1.35 %
330-222	1.83 %
330-223	1.84 %
330-224	1.51 %
330-225	1.51 %
330-226	1.50 %
330-227	1.32 %
330-300	1.42 %
330-301	1.35 %
330-302	1.81 %
330-303	1.54 %
330-304	1.51 %
330-305	1.53 %
330-306	1.50 %
330-307	1.32 %
330-320	1.52 %
330-321	1.35 %
330-322	1.83 %
330-323	1.88 %
330-324	1.51 %
330-325	1.51 %
330-326	1.50 %
330-327	1.32 %
330-400	1.44 %
330-401	1.36 %
330-402	1.84 %

330-403	1.53 %
330-404	1.51 %
330-405	1.53 %
330-406	1.53 %
330-407	1.32 %
330-420	1.52 %
330-421	1.38 %
330-422	1.86 %
330-423	1.88 %
330-424	1.54 %
330-425	1.55 %
330-426	1.53 %
330-427	1.35 %
330-500	1.45 %
330-501	1.36 %
330-502	1.81 %
330-503	1.54 %
330-504	1.54 %
330-505	1.52 %
330-506	1.53 %
330-507	1.33 %
330-520	1.55 %
330-521	1.38 %
330-522	1.86 %
330-523	1.84 %
330-524	1.51 %
330-525	1.55 %
330-526	1.53 %
330-527	1.35 %
TOTAL PERCENTAGE INTERESTS 330 BERRY STREET	100 %

EXHIBIT A (cont.)

Interests in Common Area

335 BERRY STREET

<u>UNIT NUMBER</u>	<u>UNDIVIDED PERCENTAGE INTEREST</u>
335-100	1.71 %
335-101	1.63 %
335-102	1.71 %
335-103	1.63 %
335-104	1.71 %
335-105	1.79 %
335-106	1.78 %
335-107	1.78 %
335-108	1.67 %
335-109	1.63 %
335-110	1.71 %
335-201	1.97 %
335-203	1.08 %
335-204	1.32 %
335-205	1.02 %
335-207	1.02 %
335-209	1.15 %
335-211	1.97 %
335-213	1.21 %
335-300	1.51 %
335-301	1.14 %
335-302	1.54 %
335-303	1.97 %
335-304	1.53 %
335-305	1.06 %
335-306	1.55 %
335-307	1.02 %
335-308	1.36 %
335-309	2.13 %
335-310	1.51 %
335-311	1.15 %
335-312	1.52 %
335-313	1.97 %
335-314	1.54 %
335-315	1.21 %
335-317	1.02 %

335-400	1.54 %
335-401	1.14 %
335-402	1.54 %
335-403	2.00 %
335-404	1.50 %
335-405	1.19 %
335-406	1.55 %
335-407	1.02 %
335-408	1.37 %
335-409	2.17 %
335-410	1.51 %
335-411	1.15 %
335-412	1.51 %
335-413	2.00 %
335-414	1.55 %
335-415	1.24 %
335-417	1.02 %
335-500	1.54 %
335-501	1.14 %
335-502	1.51 %
335-503	2.00 %
335-504	1.53 %
335-505	1.23 %
335-506	1.55 %
335-507	1.02 %
335-508	1.37 %
335-509	2.17 %
335-510	1.50 %
335-511	1.15 %
335-512	1.52 %
335-514	1.55 %
TOTAL PERCENTAGE INTERESTS 335 BERRY STREET	100 %

EXHIBIT B

Allocation of Regular Assessments

<u>UNIT NUMBER</u>	<u>ALLOCATED SHARE</u>
330-100	0.0098
330-101	0.0117
330-102	0.0086
330-200	0.0070
330-202	0.0090
330-204	0.0075
330-206	0.0075
330-207	0.0082
330-220	0.0076
330-221	0.0067
330-222	0.0091
330-223	0.0092
330-224	0.0075
330-225	0.0076
330-226	0.0075
330-227	0.0066
330-300	0.0071
330-301	0.0067
330-302	0.0090
330-303	0.0077
330-304	0.0075
330-305	0.0076
330-306	0.0075
330-307	0.0066
330-320	0.0076
330-321	0.0067
330-322	0.0091
330-323	0.0094
330-324	0.0075
330-325	0.0076
330-326	0.0075
330-327	0.0066
330-400	0.0072
330-401	0.0068
330-402	0.0092
330-403	0.0076

330-404	0.0075
330-405	0.0076
330-406	0.0076
330-407	0.0066
330-420	0.0076
330-421	0.0069
330-422	0.0093
330-423	0.0094
330-424	0.0077
330-425	0.0077
330-426	0.0076
330-427	0.0067
330-500	0.0072
330-501	0.0068
330-502	0.0090
330-503	0.0077
330-504	0.0077
330-505	0.0076
330-506	0.0076
330-507	0.0066
330-520	0.0077
330-521	0.0069
330-522	0.0093
330-523	0.0092
330-524	0.0075
330-525	0.0077
330-526	0.0076
330-527	0.0067
335-100	0.0086
335-101	0.0082
335-102	0.0086
335-103	0.0082
335-104	0.0086
335-105	0.0090
335-106	0.0089
335-107	0.0089
335-108	0.0084
335-109	0.0082
335-110	0.0086
335-201	0.0099
335-203	0.0054
335-204	0.0066
335-205	0.0051
335-207	0.0051

335-209	0.0058
335-211	0.0099
335-213	0.0061
335-300	0.0076
335-301	0.0057
335-302	0.0077
335-303	0.0099
335-304	0.0077
335-305	0.0053
335-306	0.0078
335-307	0.0051
335-308	0.0068
335-309	0.0107
335-310	0.0076
335-311	0.0058
335-312	0.0076
335-313	0.0099
335-314	0.0077
335-315	0.0061
335-317	0.0051
335-400	0.0077
335-401	0.0057
335-402	0.0077
335-403	0.0101
335-404	0.0075
335-405	0.0060
335-406	0.0078
335-407	0.0051
335-408	0.0069
335-409	0.0109
335-410	0.0076
335-411	0.0058
335-412	0.0076
335-413	0.0101
335-414	0.0078
335-415	0.0062
335-417	0.0051
335-500	0.0077
335-501	0.0057
335-502	0.0076
335-503	0.0101
335-504	0.0077
335-505	0.0062
335-506	0.0078
335-507	0.0051

335-508	0.0069
335-509	0.0109
335-510	0.0075
335-511	0.0058
335-512	0.0076
335-514	0.0078
TOTAL ALLOCATED SHARES	1.00

EXHIBIT C

Alternative Dispute Resolution Provisions

1. **DEFINITIONS.** For purposes of this Exhibit ("ADR Provisions") only: (i) "Declarant Party" means and includes Declarant, any director, officer, partner, member, employee, agent, or representative of Declarant, and any contractor, subcontractor, design professional, engineer, or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following or similar dispute notification and resolution procedures; and (ii) "Dispute" means any and all actions or claims between any Declarant Party on the one hand and any Owner and/or the Association on the other hand arising out of or in any way relating to the Project, any real property or Improvements in the Project, the Declaration, or regarding the condition of the Units and/or the Common Area, or the design or construction of any portion of the Project, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of Improvements, or disputes which allege strict liability, misrepresentation, fraud, negligence or breach of implied warranties as to the condition of the Units, the Common Area or other portions of the Project. Disputes do not include actions taken by the Association against Declarant to collect delinquent Assessments or any action involving any Common Area completion bonds.

The intention and purpose of this Exhibit is to provide that all Disputes be resolved in accordance with the claims procedures set forth in this Exhibit regardless of the legal theory upon which a claim is based so that a certain and efficient method is established for resolution of the Dispute. As a result, Disputes arising out of claims based on misrepresentation, fraud, breach of contract, violation of a statute or personal injury, as well as claims for breach of the functionality standards under Title 7 of the California Civil Code, are subject to the claims procedures in this Exhibit.

The foregoing notwithstanding, for purposes of this Exhibit the term "Disputes" shall not include any dispute arising out of a home warranty or common area warranty given by Declarant to an Owner or the Association, which disputes shall be resolved pursuant to the terms of the warranty.

2. **PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES:** For all "Disputes" Declarant and the Association or Owner, as applicable, agree to follow the pre-arbitration procedures set forth below:

(a) **Notification:** The Owner or Association, as applicable agrees to provide Declarant with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Owner or Association, as applicable becomes aware, or should have become aware, of such matters and Dispute. Notice to Declarant under this Paragraph does not constitute notice of a claim, or any other notice, under Civil Code Sections 895 et seq.

(b) **Cooperation; Access; Repair:** The Owner or Association, as applicable agrees to provide each Declarant Party and its representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to the Property, in order to facilitate Declarant Party's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Property, each Declarant party is hereby granted

the irrevocable right, but is under no obligation, to inspect, repair and/or replace any and all affected parts of the Property.

(c) **Mediation**: Upon their mutual agreement, the Owner or Association, as applicable and the Declarant Party may agree to voluntary mediation of a Dispute before a mutually-agreeable neutral mediator, in which case, the Declarant Party agrees to pay the mediator's fees for a one-half day mediation session. A decision to mediate or not to mediate by either party is without prejudice to either party's rights.

3. **ARBITRATION OF DISPUTES**. EXCEPT FOR DISPUTES UNDER THE LIMITED WARRANTY (WHICH SHALL BE RESOLVED PURSUANT TO THE PROVISIONS THEREOF) ANY AND ALL DISPUTES SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS DISPUTE RESOLUTION AGREEMENT; PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN SECTION 3(a) OR 3(b), BELOW, THE PARTIES SHALL FIRST ATTEMPT TO RESOLVE ANY DISPUTE THAT FALLS WITHIN THE SCOPE OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PROJECT.

(a) **Arbitration Rules**. THE ARBITRATION SHALL BE ADMINISTERED BY AND PURSUANT TO THE COMPREHENSIVE ARBITRATION RULES AND PROCEDURES OF JAMS IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION AND PURSUANT TO SECTION 4, BELOW. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE SERVICE IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION SHALL BE FOLLOWED.

(b) **Small Claims**. NOTWITHSTANDING ANY PROVISION OF THIS DISPUTE RESOLUTION AGREEMENT TO THE CONTRARY, EITHER PARTY MAY USE SMALL CLAIMS COURT AS AN ALTERNATIVE TO ARBITRATION OF A DISPUTE, IF THE AMOUNT IN CONTROVERSY IS WITHIN THE JURISDICTIONAL LIMITS OF SMALL CLAIMS COURT.

(c) **Parties Benefitted**. THIS DISPUTE RESOLUTION AGREEMENT SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, THE DECLARANT'S SUBCONTRACTORS, AGENTS, VENDORS, SUPPLIERS, DESIGN PROFESSIONALS, INSURERS AND ANY OTHER PERSON WHOM THE OWNER OR ASSOCIATION, AS APPLICABLE CONTENDS IS RESPONSIBLE FOR ANY ALLEGED DEFECT IN OR TO THE PROPERTY OR AN IMPROVEMENT THERETO. THE PARTIES CONTEMPLATE THE INCLUSION OF SUCH PARTIES IN ANY ARBITRATION OF A DISPUTE AND AGREE THAT THE INCLUSION OF SUCH PARTIES WILL NOT AFFECT THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT.

(d) **Remedies**. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING. THE OWNER OR ASSOCIATION, AS APPLICABLE AND DECLARANT EXPRESSLY AGREE THAT AN APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT AN AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY

COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

(e) Self-Executing Agreement. THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS DISPUTE RESOLUTION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DISPUTE RESOLUTION AGREEMENT, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS DISPUTE RESOLUTION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS DISPUTE RESOLUTION AGREEMENT, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS DISPUTE RESOLUTION AGREEMENT AND NOT BY A COURT OF LAW.

(f) Participation Not Delay. THE PARTICIPATION BY ANY PARTY, OR ANY PARTY WHOM THE OWNER OR ASSOCIATION, AS APPLICABLE CONTENTS IS RESPONSIBLE FOR A DISPUTE, IN ANY JUDICIAL PROCEEDING CONCERNING THIS EXHIBIT "C" OR ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, STAY, OR REFUSE TO PARTICIPATE IN ARBITRATION, OR TO REFUSE TO COMPEL ARBITRATION, INCLUDING INSTANCES IN WHICH THE JUDICIAL PROCEEDING INVOLVES PARTIES NOT SUBJECT TO THIS ARBITRATION AGREEMENT AND/OR WHO CANNOT OTHERWISE BE COMPELLED TO ARBITRATE.

(g) Federal Arbitration Act. THE OWNER OR ASSOCIATION, AS APPLICABLE AND EACH DECLARANT PARTY EXPRESSLY AGREE AND ACKNOWLEDGE THAT THIS AGREEMENT INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES (AS DEFINED IN THIS DISPUTE RESOLUTION ADDENDUM) SHALL BE ARBITRATED - WHICH ARBITRATION SHALL BE MANDATORY AND BINDING - PURSUANT TO THE FEDERAL ARBITRATION ACT, AND TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THE LATTER RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

4. RULES AND PROCEDURES—ALL DISPUTES. The following rules or procedures apply to any arbitration under this Dispute Resolution Addendum:

A. The arbitrator must be a neutral and impartial retired judge, attorney, or other person with substantial experience in relevant matters. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the arbitration or reference services, or, if no entity is involved, by the court with appropriate jurisdiction.

B. If a Dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the dispute resolution procedures prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and

appropriate parties are included in the proceeding. Declarant, as named in the Contract, shall not be required to participate in the proceeding if all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant Parties, will not or cannot be joined in the proceeding such that Declarant may be forced to litigate in two separate forums or may suffer inconsistent rulings.

C. The exclusive venue for all dispute resolution proceedings conducted under this provision shall be in the county in which the Property is located.

D. Any administration fee charged by the arbitration service shall be borne initially one half by the Owner or Association, as applicable, and one half by the Declarant Party(ies); provided, however, that the administration fee and any other fees and costs of the arbitration ultimately shall be borne as determined by the arbitrator. The arbitrator shall award litigation "costs" to the prevailing party to the same extent and in the same manner as a California court may award such "costs" pursuant to California Code of Civil Procedure Section 1032, et seq. For purposes of determining the "prevailing party," the arbitrator or referee shall specifically consider, in addition to other factors deemed relevant under local law, the total relief requested by each of the involved parties, the total relief awarded as to each of the involved parties, and any prior settlement offer of the parties in relation to the total relief awarded.