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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE SOMA GRAND RESIDENCES

**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.**

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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE SOMA GRAND RESIDENCES

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## DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

### THE SOMA GRAND RESIDENCES

**THIS DECLARATION**, made on the date hereinafter set forth, by 1160 Mission Associates, LLC, a Delaware limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

**A. Location of Property.** Declarant is the owner of certain real property located in the City and County of San Francisco ("City") State of California, more particularly described as Parcel A, Lot 57 on the air space Parcel Map entitled "FINAL MAP 3849, 1160 MISSION STREET", filed for record in the Office of the Recorder of the City and County of San Francisco, State of California, on the May 4, 2007, in Book 100 of Condominium Maps, pages 113, 114 and 115, inclusive (the "Center Map"), and on that certain condominium plan entitled "Residential Condominium Plan for 1160 Mission Street San Francisco, California", which was filed for record in the Official Records of the City and County of San Francisco, California, as Instrument Number 07-I-491992 and concurrently in the Book of Condominium Maps on the same date (the "Residential Condominium Plan").

**B. Description of Project.** Declarant has completed, or will complete, construction of a high rise mixed use building as the Soma Grand ("The Center") located at 1160 Mission Street in San Francisco, California. The Center is divided into four (4) airspace parcels by the Center Map, establishing the Residential Component as Lot 57 [Parcel A], the Commercial Components as Lot 58 and Lot 59 [Parcels B and Parcel C], and the Parking Component as Lot 60 [Parcel D]. Declarant intends to establish a residential condominium project within the Residential Component as the Residential Project described in this Residential Declaration, under the provisions of the California Common Interest Development Act, providing for separate interests in the Residential Unit and undivided Common Interests in portions of the Residential Project as the Residential Common Area.

(1) The Center is subject to The Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("Center Declaration") recorded in the Official Records of the City and County of San Francisco, as Instrument Number 07-I-491993, on November 21, 2007, which Center Declaration establishes various easements and other rights relative to the management and operation of the Center, of which the Residential Project is a component described as the Residential Component, and for the establishment of the Center Association that will manage, operate and administer various aspects of the Center, except as may be managed, operated and administered by the Residential Association established pursuant to this Residential Declaration and the Commercial Association established for the Commercial Condominium Project within the Commercial Component.

(2) The Condominium Project for the Residential Component of the Center shall be referred to as the "Residential Project" as defined in Section 1.64. This Residential Declaration applies only to the Residential Component of the Center, but not to the "Commercial Components" or the "Parking Component" (each of which are subject to the Center Declaration).

**C. Intention.** Declarant intends to improve the Residential Component of the Center by constructing two hundred forty-six (246) Condominiums within the Residential Project. Declarant

intends to create a Residential Project as a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the properties as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

**D. Owner's Interest.** The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Residential Common Area. Each Condominium shall have appurtenant to it a membership in the SOMA GRAND RESIDENCES OWNERS ASSOCIATION, a nonprofit mutual benefit corporation.

**E. General Plan of Improvement.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums and the Owners thereof.

**NOW, THEREFORE,** Declarant hereby declares that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the property in the Project.

## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

### **A. Definitions:**

**1.1. "Architectural Committee or Committee":** Architectural Committee established as the "Center Architectural Committee" as described in Section 6.2 of the Center Declaration.

**1.2. "Articles":** The Articles of Incorporation of the Association, as amended from time to time.

**1.3. "Assessment":** 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 Charges.

**1.4. "Assessment Lien":** A lien for Assessments imposed pursuant to Civil Code section 1367.1 as described in Section 4.9.

**1.5. "Association":** The SOMA GRAND RESIDENCES OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

**1.6. "Board" or "Board of Directors":** The governing body of the Association.

**1.7. "Budget":** A written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.



- 1.8. **"Building"**: The structure containing the Improvements built within the Center.
- 1.9. **"Bylaws"**: The bylaws of the Association, as amended from time to time.
- 1.10. **"Center"**: The Property referred to in the Center Declaration as The Soma Grand (the "Center") as a real estate project to consist of several distinct mixed use components, including the Commercial Components developed or to be developed within Lot 58 [Parcel B] and Lot 59[Parcel C] of the Center Map, the Parking Component developed or to be developed within Lot 60 [Parcel D] of the Center Map and the Residential Component which is the residential high-rise increment of the Center developed or to be developed on Lot 57 [Parcel A] of the Center Map for floors 5-22 of the Center.
- 1.11. **"Center Assessment"**: The Center Assessments and Center Special Assessments adopted, levied and assessed by the Center Association to the Residential Association and Commercial Association pursuant to Article 4 of the Center Declaration.
- 1.12. **"Center Association"**: The Soma Grand Center Association, a California nonprofit mutual benefit corporation, as described and set forth in the Center Declaration.
- 1.13. **"Center Board"**: The board of directors of the Center Association.
- 1.14. **"Center Common Easement Areas"**: The Common Easement Areas as described and set forth in the Center Declaration.
- 1.15. **"Center Declaration"**: The "The SOMA GRAND Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement" recorded in the Official Records of the City and County of San Francisco as set forth in Recital Paragraph B of this Residential Declaration.
- 1.16. **"Center Map"**: That certain air space parcel map entitled "'FINAL MAP 3849,1160 MISSION STREET", filed for record in the Office of the Recorder of the City and County of San Francisco, State of California, on May 4, 2007, in Book 100 of Condominium Maps, Pages 113, 114 and 115.
- 1.17. **"Center Rules"**: The Center Rules as adopted by the Center Association for the Center pursuant to the Center Declaration.
- 1.18. **"City"**: The City of San Francisco, a municipal corporation.
- 1.19. **"Commercial Components"**: Lot 58 [Parcel B] and Lot 59 [Parcel C], as described on the Center Map.
- 1.20. **"Commercial Declaration"**: The declaration of covenants, conditions and restrictions which establishes the Commercial Project.
- 1.21. **"Commercial Owner"**: The record holder(s) of title to one or more parcels in the Commercial Components.
- 1.22. **"Commercial Project"**: The commercial condominium project established for, and situated within, the Commercial Components of the Center.
- 1.23. **"Commercial Unit"**: A condominium unit in the Commercial Project.

**1.24. "Common Expenses":** Those expenses for which the Association is responsible under this Declaration, including, but not limited to, the following: (a) actual and estimated costs of maintaining, managing and operating the Project; (b) unpaid Special Assessments, Reconstruction Assessments, Capital Improvement Assessments, and amounts the Board determines are necessary to maintain the Reserve Fund at adequate levels; (c) the costs of all utilities for the Residential Common Area, and for domestic water service and sanitary sewer services and other utility services that are not separately metered to the Units, and any other utilities or services (such as trash removal) that are billed to the Association for the benefit of the Project; (d) the cost of managing and administering the Association, including compensation for managers, accountants, attorneys, and employees; (e) maintenance, repair and replacement of Residential Common Area improvements and facilities required by this Declaration and all other expenses incurred by the Association for the common benefit of the Owners, including the cost of maintenance, janitorial services, (elevator maintenance) and other services that benefit the Project or the Owners; (f) premiums for all insurance covering the Project or the Association's fair share of the premiums for such coverages if obtained by the Center Association and insurance policies for the directors, officers and agents of the Association, and bonding the Members of the Board; (g) taxes paid by the Association; (h) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project; and (i) any Center Assessment levied to the Project by the Center Association.

**1.25. "Common Interest":** The proportionate undivided interest in Residential Common Area that is a part of each Residential Condominium as set forth in this Declaration.

**1.26. "County":** The County of San Francisco.

**1.27. "Davis-Stirling Act":** California Civil Code sections 1350-1378.

**1.28. "Decks":** Those decks of the Residential Common Area designated on the Residential Condominium Plan by the designation "D," followed by a Unit number.

**1.29. "Declarant":** 1160 Mission Associates, LLC, a Delaware limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.

**1.30. "Declaration":** This Declaration, as amended or supplemented from time to time.

**1.31. "Design Guidelines":** The rules or guidelines setting forth procedures and standards for submission of plans for Architectural Committee approval.

**1.32. "DRE":** The California Department of Real Estate and any department or agency of the California state government that succeeds to the functions of the Department of Real Estate.

**1.33. "Eligible Insurer or Guarantor":** An insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 9.6.C.

**1.34. "Eligible Mortgage Holder":** A First Lender who has requested notice of certain matters from the Association in accordance with Section 9.6.C.

- 1.35. "Eligible Mortgages":** Mortgages held by "Eligible Mortgage Holders."
- 1.36. "Exclusive Use Common Area":** Those portions of the Residential Common Area set aside for exclusive use of an Owner pursuant to Section **2.2.C**, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code Section 1351(i).
- 1.37. "First Lender":** Any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Condominium.
- 1.38. "First Mortgage":** Any recorded Mortgage (made in good faith and for value) on a Condominium with first priority over other Mortgages encumbering the Condominium.
- 1.39. "Foreclosure":** The legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws or by a deed in lieu of such a foreclosure.
- 1.40. "Governing Documents":** This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Condominium Plan and Rules adopted by the Board or the Association, the Center Declaration, the Center Articles, the Center Bylaws, and the Center Rules.
- 1.41. "Maintenance Guidelines":** Recommendations and suggestions for maintenance of Project improvements.
- 1.42. "Maintenance Manual":** The document containing the maintenance procedures and requirements applicable to the Residential Common Area improvements.
- 1.43. "Major Components":** Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in Civil Code §§ 1365 and 1365.5.
- 1.44. "Map":** The Map, described above in Recital paragraph A.
- 1.45. "Member":** A person entitled to membership in the Association as provided herein.
- 1.46. "Mortgage":** A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.
- 1.47. "Mortgagee":** The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.
- 1.48. "Mortgagor":** A Person who encumbers his Condominium with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.
- 1.49. "Notice of Delinquent Assessment":** A notice of delinquent Assessment filed by the Association for a delinquent Assessment pursuant to Section **4.9.C**.

**1.50. "Owner" or "Owners":** The record holder of fee simple title to a Condominium, including Declarant, expressly excluding Persons having any interest merely as security for the performance of an obligation until such person obtains fee title thereto, and those parties who have leasehold interests in a Condominium. If a Condominium is sold under a recorded installment contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract of sale.

**1.51. "Person":** A natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

**1.52. "Project":** All of the real property described on the Residential Condominium Plan, and all improvements on that real property subject to this Declaration.

**1.53. "Public Report":** The official document and permit issued pursuant to the Subdivided Lands Act (Business & Professions Code §§ 11000 et seq.) by the State of California Department of Real Estate authorizing the offering of the Condominiums for sale to the public.

**1.54. "Regular Assessments":** A Regular Assessment determined and levied pursuant to Section 4.3.A of this Declaration.

**1.55. "Reimbursement Charge":** A charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit into compliance with the provisions of this Declaration, determined and levied pursuant to Section 4.10 and Section 5.1.A of this Declaration.

**1.56. "Reserves or Reserve Funds":** That portion of the Common Expenses collected as part of the Regular Assessments levied against the Condominiums in the Project allocated (i) for the future repair and replacement of, or additions to, the Major Components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) to cover the deductible amounts of any insurance policies maintained by the Association.

**1.57. "Residential Common Area":** All of the Residential Project excepting the individual Residential Units. Title to the Residential Common Area shall be held by all of the Residential Owners in common as set forth in Section 2.2.B. The Residential Common Area, includes, with the exception of any of such items that are included under the Center Declaration as Center Association Common Areas, Center Common Easement Areas, Center Structural Elements, Joint Use Easement Areas or Exclusive Easement Areas, without limitation, the following portions of the Residential Project: corridors, open space, decks, patios, stairs, elevators, elevator shafts, storage areas, janitorial and service areas, slabs and floors to the unfinished surfaces thereof, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Residential Unit and except the utility installations located within the boundaries of a Residential Unit and which the Residential Owner has exclusive use of, including, without limitation, space heaters, and lighting fixtures which are located entirely within the Residential Unit they serve) required to provide power, light, telephone, gas, water, sewerage, and drainage; sprinklers, sprinkler pipes, and sprinkler heads. Residential Common Area shall include the electric meters and panels, electric closets, feeders, risers and Utility Facilities within the Residential Project serving exclusively the Residential Component. The Residential Common Area shall include kitchen, bathroom and dryer exhaust ducts, corridor and Residential Unit air supply ducts, supply and return lines for heating; water pressure reducing valve system, and all other Utility Facilities in the walls, floors and ceilings of the Residential Component serving or benefiting exclusively the Residential Component.

Bearing walls, curtain walls, columns, pillars, girders within the Residential Project, wherever located shall be Center Structural Components of the Center pursuant to the Center Declaration. Residential Common Area shall include the Residential Project lobby and the Residential Project Recreation Areas.

**1.58. "Residential Component":** All of Lot 57 [Parcel A] shown on the Center Map, including the Residential Units and Residential Common Area within the Residential Parcel, with the exception of any Center Association Common Areas, Center Common Easement Areas, Center Structural Elements or Joint Use Easement Areas as defined and described in the Center Declaration.

**1.59. "Residential Condominium":** An estate in real property as defined in California Civil Code §§ 783 and 1351(f), consisting of an undivided interest in Residential Common Area and a separate interest in space described in this Declaration and the Residential Condominium Plan as a Residential Unit.

**1.60. "Residential Condominium Plan":** The recorded subdivision map for condominium purposes, containing three dimensional plans of the Condominiums built or to be built on the Residential Project which identifies the Residential Common Area and each Residential Unit as the separate interests pursuant to California Civil Code § 1351, entitled "Residential Condominium Plan for Soma Grand 1160 Mission Street San Francisco, California", which was filed for record in the Official Records of the City and County of San Francisco, California, as set forth in Recital Paragraph A of this Residential Declaration.

**1.61. "Residential Declaration":** This Residential Declaration, as amended or supplemented from time to time.

**1.62. "Residential Owner(s)":** The record holder(s) of title to a Residential Unit in the Residential Project.

**1.63. "Residential Parcel":** Lot 57 [Parcel A] as shown and described on the Center Map.

**1.64. "Residential Project":** All of the real property described on the Residential Condominium Plan for the Residential Parcel and all improvements thereon, subject to this Residential Declaration.

**1.65. "Residential Project Documents":** This Residential Declaration, as it may be amended from time to time, the exhibits, if any, attached hereto, the Articles, the Bylaws of the Residential Association, and the Residential Rules.

**1.66. "Residential Project Recreational Areas":** Those areas of the Residential Common Area [shown on the Residential Condominium Plan] located on the fifth floor of the Center that are constructed, installed and established for the recreational use of the Residential Owners, and the tenants and guests and invitees thereof, in accordance with this Declaration and any Residential Rules, including, but not limited to, an exercise room, shower facilities, wood deck, gas fire pit, spa, water feature, cabanas, clubhouse, and a landscaped park area.

**1.67. "Residential Rules":** The rules adopted from time to time by the Residential Association pursuant to Section 5.2.D.

**1.68. "Residential Unit(s)":** shall mean and refer to the elements of a Condominium in the Residential Project, as defined in Section 2.2.B, as a separate interest in space pursuant to Civil

Code section 1351(f), which is an element of the Residential Project not owned in common with the other Owners. Each Residential Unit is identified by separate number/letter on the Residential Condominium Plan preceded by the word "Unit".

**1.69. "Residential Unit Owner":** shall mean the Owner of a Condominium Unit in the Residential Project.

**1.70. "Right to Repair Law":** Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

**1.71. "Rules":** The rules adopted from time to time by the Board or the Association pursuant to Section 5.2.D.

**1.72. "SB 800":** The "Right to Repair Law."

**1.73. "Special Assessments":** A Special Assessment levied by the Association pursuant to Section 4.3.B.

**1.74. "Unit":** The elements of the Condominium, as defined in Section 2.2.A, and in Section 1351(f) of the California Civil Code, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by separate number on the Condominium Plan.

**1.75. "Utility Facilities":** Defined in Section 6.1.

**B. Interpretations:**

**1.76. "Articles, Sections and Exhibits":** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. **Exhibit "A"** attached to this Declaration is incorporated herein by this reference.

**1.77. "General Rules":** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a residential condominium development and maintaining the Residential Common Area. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

**1.78. "Priorities and Inconsistencies":** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws and Rules, or Condominium Plan, then the provisions of this Declaration shall prevail.

**1.79. "Severability":** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

**1.80. "Statutory References":** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

## ARTICLE II. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

**2.1. Description of Project:** The Residential Project is a Condominium Project within the meaning of Civil Code § 1351(f), including the Residential Common Area, the 246 Residential Units, and the improvements located thereon. Reference is made to the Condominium Plan for further details.

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

**A. Units:** Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit". Bearing walls located within the interior of a Unit are Residential Common Area, not part of the Unit, except for the finished surfaces thereof. Soffits and exposed beams in ceilings shall not be part of the Unit. Areas within dropped ceilings are part of a Unit, however, such areas may be subject to the right of way for Utility Facilities serving other Units or the Common Area as set forth in Article VII. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation, lighting fixtures, cabinetry and heating and air conditioning handlers for the Unit that are located within the Unit. Each Unit includes both the portions of the Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Residential Common Area" in Section 1.57. Each Unit is subject to such encroachments as are contained in the Building, whether the same now exist or may be later caused or created in any manner referred to in Section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Building, or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Residential Common Area subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

**B. Residential Common Area:** The remainder of the Residential Project exclusive of the Units constitutes "Residential Common Area," which shall include, without limitation, all of the improvements and elements described in Section 1.57.

Each Condominium Owner shall have, as appurtenant to his or her Unit, an undivided interest in the Residential Common Area as set forth in Exhibit "A". The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Areas in accordance with the purposes for which they are intended subject to this Declaration and the Rules, without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

**C. Exclusive Use Common Areas:** The following described portions of the Residential Common Area, referred to as Exclusive Use Common Areas," are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to that Condominium:

(1) Deck designated "D", followed by the number of the Unit for some but not all of the Units. The use of Decks shall be subject to the rights of the Association to have access to such Decks from the exterior of the Building for washing of windows and for access to Association window washing equipment located on such Decks.

In addition, the following areas or items are "Exclusive Use Common Areas" appurtenant to the Condominiums in which they are located or attached:

- (1) that portion of any Common Area floor or ceiling that is pierced by interior stairs;
- (2) the space between the exterior boundary of any Unit and the interior surface of any bay window or greenhouse window;

The air conditioning equipment serving a Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Owner. The space occupied by the air conditioning equipment, wherever located, shall be restricted to the exclusive use of the Owner whose air conditioner occupies such space.

Except as described herein, no other portion of the Common Areas shall be Exclusive Use Common Area.

**D. Reserved Rights of Declarant and Board over Residential Common Areas:** The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Project shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Residential Common Area or other property interests in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, Internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Residential Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use enjoyment of the Residential Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Project) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Condominium or any Exclusive Use Common Area without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Residential Common Area as authorized in this Section **2.2.D** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by Section **9.6**.



**2.3. Rights of Entry and Use:** The Units and Residential Common Area (including Exclusive Use Common Area) shall be subject to the following rights of entry and use:

**A.** The non-exclusive rights of each Owner for ingress, egress and support through the Residential Common Area, and use of the Residential Common Area as provided in Sections **2.2.A** and **2.2.B**.

**B.** The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration, the Bylaws, or Rules provided that the Owner has received thirty (30) days written notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

**C.** The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in Section **5.2.E**, and to enter any Unit to perform the Association's duties under this Declaration.

**D.** The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article VI.

**E.** The encroachment easements described in Section **9.5**.

**F.** The rights of the Declarant during the construction period as described in Section **9.7**.

**G.** The rights of Owners to make improvements or alterations authorized by California Civil Code § 1360(a)(2), subject to the provisions of Section **7.8** to the extent applicable.

**2.4. Partition Prohibited:** The Residential Common Area shall remain undivided as set forth above. Except as provided by California Civil Code §1359 or authorized under Sections **8.2.B** or **8.3**, no Owner shall bring any action for partition of the Residential Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph.

Any proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Residential Common Area.

**2.5. Telecommunications Easement:** Declarant reserves blanket easements (collectively "Telecommunications Easements") over the Project for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "Telecommunications Purposes") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns (subject to other existing agreements of instruments of Record). No one, except for Declarant and Declarant's transferees may use the Project for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Project does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in

any manner which will unreasonably interfere with the reasonable use and enjoyment of the Project by any Owner. If the exercise of any Telecommunications Easement results in damage to the Project, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Project to another Person before the last Close of Escrow in the Project, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Project.

**2.6. All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

### **ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1. Association to Manage Residential Common Areas:** The management of the Residential Common Area shall be vested in the Association in accordance with its Bylaws. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, and the Articles and Bylaws.

**3.2. Membership:** The Owner of a Condominium shall automatically, upon becoming the Owner of the Condominium, be a Member of the Association, and shall remain a Member of the Association until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws.

**3.3. Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

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

**3.4. Membership and Voting Rights:** Membership and voting rights shall be as set forth in the Bylaws.

## ARTICLE IV. ASSESSMENTS AND LIENS

**4.1. Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Condominium within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed for that Condominium, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay Regular Assessments and Special Assessments to the Association as established in this Declaration, and

(2) to allow the Association to enforce any Assessment Lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The Regular and Special Assessments, (including Reimbursement Charges to the extent permitted by current law), together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing Assessment Lien upon the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. Each Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Residential Common Areas or by the abandonment of the Owner's Condominium.

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

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

### **4.3. Assessments:**

**A. Regular Assessments:** The Board shall establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Regular Assessments shall be made for a one-year period and collected in monthly installments.

The Regular Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account.

**B. Special Assessments:** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing a Member into compliance with provisions of the Governing Documents.

**4.4. Restrictions on Increases in Regular Assessments or Special Assessments:**

**A. Restrictions.** Without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this Section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in Section 12.1.A of the Bylaws or having obtained the approval of such increase by the Members in the manner set forth above in this Section 4.4.

**B. Assessments - Emergency Situations.** Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation in amounts that exceed the provisions of Section 4.4.A, above. For purposes of this section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court,
- (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or
- (3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment.

The Association shall provide to the Owners by first-class mail notice of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

This Section 4.4.B incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this Section 4.4.B shall be automatically amended in the same manner without the necessity of amending this Declaration.

**C. Notice and Quorum for Any Action Authorized Under Section 4.4:** Any action authorized under Section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

**4.5. Division of Assessments:** Except as provided otherwise in this Declaration, both Regular Assessments and Special Assessments shall be levied equally among the Condominiums. Those portions of the Common Expenses that are described as "Specially Allocated Common Expenses" on Exhibit "A" that is attached to this Declaration shall be allocated and assessed to the Condominiums based upon the relative square footage of each of the Units in the Project as set forth in Exhibit "A". Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.6. Date of Commencement of Regular Assessment; Due Dates:** The Regular Assessments provided for in this Declaration shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner under authority of a Public Report. The first Assessment shall be adjusted according to the number of months remaining in the calendar year.

Subject to the provisions of Section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of the Regular Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Regular Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

**4.7. Effect of Nonpayment of Assessments:** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

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

be Common Expenses collectible from all of the Condominium Owners excluding the Condominium Unit being acquired by the First Mortgagee.

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

**4.9. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of Civil Code § 1367.1. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

**A. Statement of Charges:** At least 30 days prior to the Association recording an Assessment Lien upon a Unit pursuant to Civil Code § 1367.1(a), the Association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by Civil Code Section 1367.1(c)(3).

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 of the Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of the Civil Code before the Association may initiate foreclosure against the Owner's Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

**Note:** Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment. When an Owner makes a payment, the owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

**B. Payment Plan:** An Owner may submit a written request to meet with the Board to discuss a payment plan for the Assessment debt noticed pursuant to Section 4.9.A. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

**C. Notice of Delinquent Assessment:** After compliance with the provisions of Civil Code § 1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Unit of the delinquent Owner prior and superior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall include an itemized statement of the charges owed by the Owner described in Section 4.9.A above, a description of the Unit against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed by certified mail to every person whose name is shown as an Owner of the Unit in the Association's records no later than ten (10) calendar days after recordation.

**D. Lien Releases:** Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

**E. Enforcement of Assessment Lien and Limitations on Foreclosure:** The collection by the Association of delinquent Regular Assessments or delinquent Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not be enforced through judicial or nonjudicial foreclosure, but may be collected or secured in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(a) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(b) In the discretion of the court, an additional amount to that described in subparagraph (a) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Unit upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4. Any other manner provided by law, except for judicial or nonjudicial foreclosure.

**F. Foreclosure:** The Association may collect delinquent Regular Assessments or delinquent Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any Assessments that are more than twelve (12) months delinquent, using judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

(3) The Board shall provide notice by personal service to an Owner of a Unit who occupies the Unit or to the owner's legal representative, if the Board votes to foreclose upon the Unit. The Board shall provide written notice to an Owner of a Unit who does not occupy the Unit by first-class mail, postage prepaid, at the most current address shown on the books of the



Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Unit may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

In addition to the requirements of Civil Code Section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to Section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

**G. Sale by Trustee:** Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments or from taking a deed in lieu of foreclosure.

**H. Purchase By Association:** The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a Foreclosure sale, and to acquire and hold, lease, mortgage and convey the Condominium. If the purchase of a Condominium would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Condominium is owned by the Association, following Foreclosure:

- (1) no right to vote shall be exercised on behalf of the Condominium;
- (2) no Assessment shall be assessed or levied on the Condominium; and
- (3) each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Condominium at Foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium which deed shall be binding upon the Owners, successors, and all other parties.

**I. Suspension of Rights of Delinquent Owner:** The Board may temporarily suspend the voting rights and right to use Common Area facilities of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

**J. Fines and Penalties:** In conformity to Civil Code §1367.1(e), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code § 1367.1(d), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien. Provided however that any such enforcement as a lien shall only be permitted if there are no Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Final Subdivision Public Report. In the event that Civil Code §1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §1367.1(e).

The provisions of this Section 4.9 are intended to comply with the requirements of Civil Code section 1367.1 in effect as of January 1, 2007. If these sections are amended or rescinded in any manner the provisions of this Section 4.9 automatically shall be amended or rescinded in the same manner. (NOTE: Civil Code section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.)

**4.10. Reimbursement Charges:** The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Unit into compliance with the provisions of the Governing Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board.

**4.11. Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of Section 4.1 and, if necessary, a Special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**4.12. Estoppel Certificate:** Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of Regular Assessments and Special Assessments, and Reimbursement Charges, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to

provide this information, provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

**4.13. Rights of Center Association:** The Center Association shall have the rights set forth in the Center Declaration to have allocated and collected by the Residential Association the prorata portion of the Center Assessment to each of the Residential Units, and the Residential Association shall have the obligation to pay to the Center Association, each month as collected, on a priority basis, from each monthly payment of regular assessments levied by the Residential Association, the Center Assessment as levied and assessed to the Residential Association by the Center Association. The Center Association shall be entitled to assert and carry out all of its rights of enforcement of Center Assessments for unpaid and delinquent Center Assessments as set forth in Section 4.10 of the Center Declaration. The Regular Assessments of the Residential Association levied against each Residential Unit shall include a portion for the proportionate amount of the Center Association Assessment that is levied by the Center Association to the Residential Project pursuant to the terms and conditions of the Center Declaration.

All rights of imposing, collecting and enforcing Regular Assessments and Special Assessments by the Residential Association are subject to the rights of the Center Association to impose, collect and enforce Regular Assessments and Special Assessments as set forth in Article 4 of the Center Declaration. This section cannot be modified, changed, altered or deleted from this Residential Declaration without the express written consent of a majority of the Center Board.

## ARTICLE V. DUTIES AND POWERS OF THE ASSOCIATION

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

**A. Maintenance:** The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Residential Common Area and all facilities (including Utility Facilities to the extent described in Section 6.3), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Condominium as required by Section 7.19. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget, and in conformance with any Maintenance Guidelines and Maintenance Manual. Unless specifically provided in any Maintenance Guidelines or Maintenance Manual, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property and improvements thereon.

(1) Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Residential Common Areas, including exterior doors to Units, exterior windows and glass surfaces, landscaping, including irrigation systems, (except for private Decks which are to be cleaned, and maintained by Owners as per Section 7.19), decks, the Residential Project lobby, and the Residential Project Recreational Areas.

(2) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his guests, tenants or invitees or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall

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

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

(4) Landscaping shall include regular fertilization, irrigation, pruning, and other prudent garden management practice necessary to promote a healthy weed-free environment for optimum plant growth. The Association shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

(5) Except to the extent such maintenance is undertaken by the Center Association under and pursuant to the Center Declaration, the Association shall be responsible for the periodic maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any interior sprinklers but excluding smoke detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. The Association's obligation to maintain interior sprinklers extends only to the point where the line or lines serving the individual Units branch off of the main distribution lines, so that the maintenance of the laterals or branch lines that serve an individual Unit are the responsibility of the Owner(s). Maintenance shall include periodic testing of such equipment.

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

(7) Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described

above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Unit and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

(8) In the event of any water leak or overflow from any Unit that damages any Residential Common Area or other Unit, the Owner and occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the dwelling to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association, and the Association may levy a Reimbursement Charge to recover the cost. If the damage may be covered by insurance maintained by the Association, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner. If a Unit Owner becomes aware of any potential problems or issues with respect to the Residential Common Area improvements, including, but not limited to, those listed in this Section 5.1.A, and particularly any water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Residential Common Area improvements.

**B. Inspection and Maintenance Guidelines:** The Declarant has provided the Association and each Owner with the inspection and maintenance guidelines and schedules (including manufacturers' guidelines and schedules) for the inspection and maintenance of the improvements within the Project ("Maintenance Guidelines"). When an Owner transfers a Unit, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Unit on or before the date of the transfer of title. Replacement copies of the Maintenance Guidelines may be obtained from the Declarant at Declarant's principal place of business. Declarant may charge a reasonable fee for providing replacement copies of the Maintenance Guidelines. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Residential Common Area, which the Association has the responsibility to maintain. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines. The Board periodically and at least once every three (3) years shall review and update the Maintenance Guidelines; provided however that the Maintenance Guidelines may not be modified by the Association to reduce the maintenance obligations and requirements of the Association without prior written approval of Declarant for a period of ten (10) years after the conveyance of the first Unit in the Project to an Owner other than the Declarant.

(1) The Association shall cause inspections of all infrastructure to be routinely made in conjunction with the Association's manager. The Board shall engage professionals to conduct inspection of those components of the Project if the Board or the Association's manager deems that such inspection by professionals, such as an architect, a civil engineer, structural engineer, landscape architect or other such professional, is warranted. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection.

(2) The inspections shall be reported at the annual membership meeting and in writing, and shall include recommendations for cleaning, maintenance, repair, replacement, etc. (if any), as well as opinions of the costs. The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental investigations by specialized consultants.

(3) The Association shall keep permanent records of all: (a) Complaints and potential problems, including description, date and by whom; (b) Reports, including inspections and recommendations; (c) Repairs, including description, location, date, by whom made and cost; and (d) Plans, including construction drawings, subsequent modifications, and repair plans.

(4) For a period of ten (10) years after the date of the last Close of Escrow in the Project, the Board shall also furnish to Declarant: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection; and (b) the most recent inspection report prepared for any portion of the Project, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

(5) The Board may, from time to time, make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. No changes may be made to the Maintenance Manual without the Declarant's prior written consent as long as there are Class B Members of the Association pursuant to the Bylaws.

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

(7) The Association shall have the power and duty to: (a) operate, maintain and inspect the Project and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual; and (b) review any Maintenance Manual applicable to the Project for necessary or appropriate revisions no less than annually after the Board has prepared the budget; provided, however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Condominium in the Project by Declarant.

**C. Insurance:** The Association shall maintain such policy or policies of insurance as are required by Section 8.1 of this Declaration and under the Center Declaration.

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

**E. Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

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

**G. Enforcement:** The Association shall be responsible for the enforcement of this Declaration.

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

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

**A. Utility Service:** Except to the extent such is undertaken by the Center Association under and pursuant to the Center Declaration, the Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Condominiums television service and other communications services, garbage and trash collection and other services, provided that the Association is reimbursed by the Owners to whom such services are provided.

**B. Easements:** The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for roads, utilities, communications services, cable and other television services, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request. The Board of Directors may grant Exclusive Use easement rights over a portion of the Common Area to a Member with the affirmative vote of sixty-seven percent (67%) of the separate interests in the Project, and without the approval of the Members in those limited cases set forth in Civil Code § 1363.07.

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

**D. Adoption of Rules:** The Board or the Members of the Association by majority vote, may adopt reasonable Rules that are not inconsistent with this Declaration relating to the use of the Common Area and all its facilities, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are either: (I) posted in a conspicuous place in the Residential Common Area; or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

**E. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Residential Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in Section 7.19, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

**F. Assessments and Liens:** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof.

**G. Fines and Disciplinary Action:** The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Governing Documents and the Rules. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, rights to the use of recreational facilities or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2.D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such Assessments as appropriate under applicable law.

**H. Enforcement:** The Board shall have the authority to enforce this Declaration as per Section 9.1 hereof.

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

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



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

**L. Contracts:** The Board shall have the power to contract for goods and/or services for the Residential Common Area, for the Condominiums, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of Section **8.1.A(3)** herein. Notwithstanding anything in the Governing Documents to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract ("Telecommunications Contract") with a telecommunications service provider ("Service Provider"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Condominium in the Project. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

**(1) Initial Term and Extensions.** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

**(2) Termination.** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire; and (ii) at any time, the Board may terminate the Telecommunications contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

**(3) Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Condominiums represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Project is located, and, if so, the amount of such discount.

**(4) Installation of Telecommunications Facilities.** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Condominium.

**(5) Removal of Telecommunications Facilities.** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

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

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds;

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

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

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

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

**N. Use of Recreational Facilities:** The Board shall have the power to limit the number of an Owner's tenants or guests who may use the facilities located in the Residential Project Recreational Areas, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, after notice and hearing, as provided in the Bylaws.

**O. Association Services:** The Association may provide housekeeping services to the Units as a Common Expense and may provide other services to the Owners or occupants of Units, such as butler services, pet services, and the like, provided however that the Association shall not charge for such services as Common Expenses, but shall levy and charge such Owners or occupants a service fee for providing such services at such rates and charges that the Board deems to be reasonable to cover all costs of providing such services. Common Expenses may include the costs of providing doorman services, a concierge, valet services and other services to the Owners or occupants of Units as the Board deems reasonable to provide at such rates and charges that the Board deems to be reasonable to cover all costs of providing such services.

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

**Q. Appointment of Trustee:** The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 4.9 and California Civil Code § 1367.1(d).

**R. Litigation/Arbitration:** The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in Section 9.16, and only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant.

If, and to the extent that, there is any inconsistency between this Section 5.2.R and applicable provisions of the California Civil Code pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

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

**T. Common Area Improvements:** The Board shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Residential Common Area in a manner not inconsistent with this Declaration and the Center Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Board shall not include in any Regular Assessment or Special Assessments the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

**U. Granting Rights:** The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Condominiums; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project.

**5.3. Commencement of Association's Duties and Powers:** Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability for those duties and powers.

## ARTICLE VI. UTILITIES

**6.1. Owners' Rights and Duties:** The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, meters, wires, ducts, pipes, flues, pumps, boilers, and pipes, flues and heating and air conditioning facilities, collectively, "Utility Facilities") shall be as follows:

**A.** Whenever Utility Facilities are installed within the Project, which Utility Facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those Utility Facilities, the Owners of any Condominium served by those Utility Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those Utility Facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

**B.** Whenever Utility Facilities serving more than one (1) Condominium are installed within the Project, the Owner of each Condominium served by those Utility Facilities shall be entitled to the full use and enjoyment of such portions of those Utility Facilities as service his or her Condominium.

**C.** In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to Section 9.16.E. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

**6.2. Easements for Utilities and Maintenance:** Easements over, under and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of Utility Facilities and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by Declarant and its successors and assigns, until the completion of construction of the Project and sale of the Condominiums under authority of a Public Report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be in favor of Declarant, and its successors and assigns, and in favor of the Association.

The location of the Utility Facilities described in this section, and the location of the easements to accommodate such Utility Facilities, shall be set forth in the final plans for each Building.

In case of any variance between the Condominium Plan and the final "as-built" plans with respect to the locations of said Utility Facilities, the "as-built" plans shall be determinative as to the location of said Utility Facilities, and hence, the location of the easements to accommodate such Utility Facilities.

**6.3. Association's Duties:** The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in Section 7.19. The Association shall pay all charges for utilities supplied to the Project except electrical services and other utility services metered or charged directly and separately to the Condominiums.

## ARTICLE VII. USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Condominium in the Project is subject to the following:

**7.1. Condominium Use:** No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted in any Condominium, except that residential Condominiums may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the Unit; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Unit, or on exterior of the Building, or on any Residential Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. Declarant, its successors or assigns, may use any Condominium or Condominiums in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by Declarant, or until three (3) years from the date of closing of the first sale in the Project, whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Condominiums or any portion of the Condominiums in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. This section shall not be construed to limit the personal use of any Condominium or any portion of the Condominium in the Project by any Owner or his or her social or familial guests.

The number of residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom in any Condominium shall be permitted as permanent residents. (A "permanent resident" means any person residing in a Condominium more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Condominium.

No health care facilities operating as a business or charity shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

No family day care center shall be permitted within the Project except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;

B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;

C. Abide by and comply with all of the Association's Rules;

D. Supervise and be completely responsible for children at all times while they are within the project;

E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

**7.2. Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on within Condominium, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners' Condominiums or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

**7.3. Signs:** Subject to Civil Code §§ 712, 713 and 1353.6, no signs shall be displayed to the public view on any Condominium or on any other portion of the Project, except non-commercial signs may be displayed within a Condominium that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs, and that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or his or her agent may display one (1) such For Sale or For Rent or For Exchange sign within his or her Condominium and one sign in the Common Area advertising directions to the Owner's Unit which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs, and comply with the requirements of State law, and applicable local ordinances. These restrictions on display of signs apply to signs that are visible from the exterior of a Unit, and are not intended to restrict signs that may be seen only from within the Unit in which the sign(s) is displayed.

**7.4. Animals:** Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Condominium, or on any other portion of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner. Owners, their tenants or other occupants of Units may keep one (1) a dog or one (1) cat within a Unit, and may keep a reasonable number of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes provided it is not kept, bred, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pet shall be allowed in the Residential Common Area except as may be permitted by Residential Rules or the Center Rules. No Owner shall allow his dog to enter the Residential Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found

within the Residential Common Area in violation of the Rules of the Board or this Declaration or the Center Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pet from soiling all portions of the Residential Common Area and shall promptly clean up any waste left by their pet. Owners shall be fully responsible for any damage caused by their pet.

Owner shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit (between the hours of 10:00 PM to 7:00 AM). An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination. In no event shall any Owner authorize, bring or keep within the Project: (a) any pit bull, rottweiler, doberman pinscher, mastiff, canaria presa, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or vermin. The Residential Board may adopt Residential Rules regarding the keeping of pets and the behavior of pets in the Residential Project. Subject to the provisions of applicable law, the Residential Association shall have the right to adopt Residential Rules that prohibit the keeping of pets, or certain types of pets, with the understanding that any Owner who owns such a pet that is so prohibited at the time the Rule is adopted shall have the right to retain such pet, if such pet is otherwise in compliance with this Residential Declaration, the Residential Rules, the Center Declaration, and the Center Rules, but shall not have the right to replace such pet or subsequently acquire additional pets that are so prohibited, with the exception of dogs for the benefit of persons with disabilities.

**7.5. Trash Disposal and Trash Chutes:** All rubbish, trash and garbage shall be regularly removed from the Residential Units and from the Residential Common Areas, and shall not be allowed to accumulate in an unreasonable or unhealthy manner. Trash, garbage and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition in accordance with the Residential Rules. The Residential Association shall be responsible for removal of garbage, trash and recycling from the central enclosure areas within the Residential Project, except for the trash chute which serves the Residential Project. The trash chute that connects with the residential trash room in the Center Association Common Area and the trash room in the Center Association Common Area shall be administered and operated by the Center Association as an expense of the Residential Association. The Residential Owners and all occupants of Residential Units shall use the trash chute within the Residential Project for disposal of trash, garbage and refuse that fits appropriately into such trash chute. Any garbage chutes shall be used in a manner to avoid obstruction. All trash, garbage and refuse that does not fit appropriately into the trash chute shall be placed in the service vestibule located on the floor on which the Residential Unit is located in accordance to the Residential Rules. The trash chutes and trash collection areas of the Center shall be used in accordance with the Center Rules. Residential Owners shall not place any items in the trash chutes or other trash collection areas of the Center that violate the Center Declaration or the Center Rules. No toxic or hazardous materials shall be discarded within the Residential Project or the Center by dumping in the garbage chutes or containers, down the drains, or otherwise.

**7.6. Radio and Television Antennas: Radio and Television Antennas:** The Project is equipped with centralized Telecommunications Facilities for the use and benefit of the Owners and other occupants of the Units. No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Antennas") shall be erected, constructed or placed on any Common Area or Exclusive Use Common Area, except that if an Owner or other occupant of a Residential Unit is not able to obtain reception of reasonably adequate television or radio transmissions through the Telecommunications Facilities, such an Owner may, after demonstrating to the Association the inadequacy, install no more than one (1) an Antenna with a diameter or diagonal measurement that does not exceed one (1) meter within a Deck that is appurtenant to a Residential Unit only if it conforms to the Rules and any Design Standards, if then required by the Architectural Committee, any necessary approval is obtained in accordance with the provisions of Section 7.8. Reasonable restrictions which do not significantly increase the cost of the Antenna system or significantly decrease its efficiency or performance may be imposed. Antennas may not be attached to the exterior surfaces of any Building, to any railing of a Deck, and there shall be no penetrations made to the Building for installation of any such devices. The Architectural Committee shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC [Federal Communications Commission] regulations. If the installation or maintenance of an Antenna by an Owner causes harm or injury to the Project or any part thereof, the Owner shall be responsible for the costs and expenses of repairing or remedying such harm or injury and for compensating the Association or any other Owner for the costs of any damage or injury caused by such installation or maintenance of an Antenna.

**7.7. Right to Lease:**

**A.** Any Owner who wishes to lease his Condominium must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

(1) all leases must be in writing;

(2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;

(3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;

(4) all Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominiums and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached;

(5) no Owner shall lease his Unit for a period of less than thirty (30) days.

**B.** Any failure of a tenant to comply with this Declaration, the Center Declaration, the Residential Rules or the Center Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

**C.** If any tenant is in violation of the provisions of this Declaration, the Center Declaration, the Residential Rules or the Center Rules, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages.



If the court finds that the tenant is violating, or has violated any of the provisions of this Declaration, the Center Declaration, the Residential Rules or the Center Rules, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

**D.** The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the this Declaration, the Center Declaration, the Residential Rules or the Center Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

**E.** Each Owner shall provide a copy of this Declaration, the Center Declaration, the Residential Rules or the Center Rules to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to be bound by this Declaration, the Center Declaration, the Residential Rules or the Center Rules, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of this Declaration, the Center Declaration, the Residential Rules or the Center Rules.

**F.** This section is subject to the provisions of the San Francisco Rent Stabilization and Arbitration Ordinance.

#### **7.8. Architectural Review:**

**A.** Only the Association may construct or install improvements within the Residential Common Area of the Project. There shall be no construction or installation of improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit or painting, alteration or modification of existing improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit by an Owner, his agents, tenants, contractors or other representatives, except as provided for in this Section 7.8 until the same has been approved in writing by the Architectural Committee.

**B.** Notwithstanding the foregoing, no permission or approval shall be required to decorate, paint or repaint the interiors of a Residential Unit, except for any such decorating that involves the structural or mechanical elements of the Center, flooring of the Residential Unit or the widow covering of the Residential Unit. No such permission or approval shall be required to rebuild a Residential Unit in accordance with Declarant's original plans and specifications. Nothing contained in this section shall be construed to limit the right of an Owner to paint the interior of his or her Residential Unit any color desired.

**C.** In order to maintain low noise transference levels between Residential Units, and to comply with applicable building standards, floor covering materials that are replaced shall be replaced only with materials of equal or better quality and noise transmission specifications, and in conformance with Residential Rules, the Center Rules, and the provisions of this Residential Declaration, including Section 7.20 and Section 7.21. The Residential Board may adopt Residential Rules pertaining to the type and sufficiency of floor covering in a Residential Unit to adequately reduce transmission of sound between Condominium Units or other portions of the Center.

D. Any construction within the Residential Project shall conform to all of the requirements stated in the Center Declaration or in any Center Rules pertaining to construction within the Center or the Residential Component, including, but not limited to matters such as insurance; hours of construction; scheduling of construction activities, including use of freight or service elevators; access to loading docks; storage of materials; parking of vehicles; clean up of work; and control of dust and debris from work.

E. Before commencement of any alteration or improvements approved pursuant to the requirements of the Center Declaration, the Owner shall comply with all appropriate governmental laws and regulations. Approval pursuant to the Center Declaration does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

F. **Governmental Approvals:** All alterations, modifications, or other improvements on or within the Project shall comply with all design requirements, approvals and procedures of the City. Before commencement of any alteration or improvements approved by the Architectural Committee and, if required, by the Board, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee or Board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

G. **Completion of Work; Review of Work:** Upon approval of the Committee or Board, the Owner shall diligently proceed with the commencement and completion of all work so approved by the Committee in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

The Committee or Board shall inspect work within sixty days after a notice of completion has been delivered to the Committee or Board by the Owner. The Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that the Committee or Board approval is being followed. The Committee or Board is to inspect the work performed, and determine whether it was performed and completed in compliance of the approval granted in all material respects. If at any time during the construction of any work, the Committee or Board finds that the work was not performed or completed in compliance of the approval granted in all material respects, or if the Committee or Board finds that the appropriate approval which was required for any work was not obtained, the Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Committee or Board shall determine in its reasonable judgment whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this Section 7.8 only if the Board has undertaken the architectural review functions under this Article.

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural review functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural review functions under this Article, the Board shall act after

expiration of 30 days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, 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 (1) remove the non-complying improvement, (2) remedy the non-compliance, or (3) institute legal proceedings to enforce compliance or completion.

**H. Mechanics' Liens:** No Owner may cause or permit any mechanics' lien to be filed against the Common Area or another Owner's Condominium or any other portion of the Center for labor or materials alleged to have been furnished or delivered to the Owner. Any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to remove such mechanics' lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Condominium to recover the cost of discharge.

**I. No Waiver of Future Approvals:** The approval of any proposals, plans and specifications or drawings by the Board or the Committee for any work done or proposed in the Residential Project does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**J. Variances:** The Committee may authorize variances from compliance with any of the architectural provisions of Declaration or the Center Design Guidelines, including restrictions on height, size, floor area or placement of structure, or similar restrictions, when circumstances such as hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on recordation. After Declarant's right to appoint a majority of the Committee's members expires, the Board must approve any variance recommended by the Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Condominium. The Committee's written variance shall be recorded against applicant's Condominium in the Official Records. The cost of recording the variance shall be borne solely by the applicant.

**7.9. Structural Integrity:** Nothing may be done in any Condominium or in, on or to the Residential Common Area or any other portion of the Center that may impair the structural integrity (including the water seal) of the Building, or that may alter the plumbing, electricity or natural gas facilities serving any other Condominium or any other portion of the Center, except as otherwise expressly provided in this Declaration and the Center Declaration. No Owner may pierce, remove or otherwise modify any wall, ceiling or floor separating the Unit from another Unit or from Residential Common Area (except as approved by the Committee), nor install any wall or ceiling-mounted loudspeakers or other noise-generating devices. The Board may adopt a Rule that restricts the hours of operation or otherwise restricts the use of jacuzzi-type tubs in the residences.

**7.10. Window Coverings:** All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or the Architectural Committee.

**7.11. Clothes Lines:** There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry or other such items over exterior railings shall be allowed.

**7.12. Power Equipment and Motor Vehicle Maintenance:** With the exception of the Declarant and its employees and contractors, pursuant to Section 9.7 hereto, and excepting the Residential Association and the Center Association and their employees and contractors, no power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board and as may be in conformance with the Residential Rules and the Center Rules. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

**7.13. Liability of Owners for Damage to Common Area:** The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in Section 5.1.A.

**7.14. Commonly Metered Utilities:** The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof or surcharges for any abuse of such utility services.

**7.15. Flags, Pennants, Banners, Etc.:** There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project that would be visible from the street, Residential Common Area, or the other Units, except in conformance with Center Rules.

**7.16. Water Bed Restrictions:** No water beds shall be permitted.

**7.17. Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept in any Unit or in any improvements constructed in any Unit, or in the Residential Common Area or elsewhere in the Center, by an Owner or occupant of a Unit that will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit, the Residential Common Area, the Center, or which would be in violation of any law.

**7.18. Common Area Use:** Nothing shall be stored, grown, or displayed in the Residential Common Area, including any Decks, that is not approved in advance by the Board.

**7.19. Owner's Right and Obligation to Maintain and Repair:**

**A.** Except for those portions of the Project which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition. Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Each Owner shall maintain, repair and replace any smoke detectors located in the Owner's Unit. The Association shall maintain

any automatic fire sprinkler heads located in any Unit, provided that each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean (and neat condition at all times and shall maintain the landscaping in any such areas).

**B.** Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit.

**C.** Each Owner shall maintain the improvements within his or her Unit in accordance with the Maintenance Guidelines established by the Declarant. A copy of the Maintenance Guidelines shall be delivered by Declarant to each Owner when the Unit is sold to the Owner. Each Owner shall retain the Maintenance Guidelines and take all appropriate actions to comply with and implement the Maintenance Guidelines. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Maintenance Guidelines to the transferee of the Unit on or before the date the Unit is transferred.

**D.** In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Unit, the Owners shall inspect the interior of their Units not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

**E.** In the event the Owner fails to carry out such maintenance within said period, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association as a Reimbursement Charge, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

**F.** In the event an Owner fails to maintain the interior of his Unit (or the landscaping within his private patio) in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice.

**7.20. Floor Coverings:** No alteration or replacement of the floor covering materials originally installed in the Units shall be permitted except with the prior review and written consent of the Board or the Architectural Committee, if the Board has delegated this review to the Committee. The Board or Committee shall approve a request for such alteration or replacement of the floor covering materials if the request reasonably provides for equivalent insulation against sound transmission to the Unit below as the originally installed flooring and meets and complies with the Association's Rules for alteration or replacement of the floor covering materials.

**7.21. Sound Transmission Restrictions:** Caution is recommended for alteration of any wall in the Unit, including demising walls and common walls. It is necessary to have limitations regarding such walls to minimize transmission of sound and/or vibration between Units and to protect against installation of equipment and devices that are of greater weight than the weight which the wall system was designed to carry. The following limitations shall apply to affixing or

installing equipment, including but not limited to televisions, speakers and other such equipment, to the walls of a Unit:

**A.** No recessed or affixed speakers or noise/vibration-emitting device shall be affixed or attached to (mechanically fastened) to any demising wall or common wall of a Unit. Caution is recommended for alteration of any wall in the Unit – not just demising or common walls.

**B.** No televisions, flat panel displays or other such devices shall be installed or affixed to any demising wall, common wall or ceiling of a Unit except with the prior review and written consent of the Board or the Architectural Committee, if the Board has delegated this review to the Committee. The Board or Committee shall approve a request for such installation or affixation if the request reasonably provides for appropriate measures to assure that there will not be material sound transmission to the Units that are adjacent or below. A demising wall, common wall or ceiling of a Unit cannot be cut or opened to allow for wiring or cabling for any purpose (entertainment, communications, networking, or electrical transmission) except with the prior review and written consent of the Board or the Architectural Committee, if the Board has delegated this review to the Committee.

**7.22. Fire Restrictions:** No Owner or other resident of the Project may store any flammable materials on any Exclusive Use Common Area Deck. Further, no exterior fires of any kind, including those contained in barbecue grills, shall be permitted in any Unit or on any Exclusive Use Common Area Deck. Nothing may be done in any Condominium or in, on or to the Residential Common Area that may impair or alter fire sprinklers within the Units or their source of water.

**7.23. Water Supply System:** No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, the Committee and all other governmental authorities with jurisdiction.

**7.24. View Obstructions:** Each Owner acknowledges that: (a) there are no protected views in the Property, and no Condominium is assured the existence or unobstructed continuation of any particular view; and (b) any construction, landscaping (including the growth of landscaping), or other installation of improvements by Declarant, other Owners or Owners of other property in the vicinity of the Property may impair the view from any Condominium, and the Owners consent to such view impairment.

**7.25. Rights of Disabled:** Subject to Section 7.8, each Owner may modify his Unit and the route over the Residential Common Area leading to the front door of his Unit, at his sole expense, to facilitate access to his Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code § 1360 or any other applicable law.

**7.26. Smoking Restrictions:** Smoking shall not be permitted in any indoor (enclosed) portion of the Residential Common Area, at anytime, including any hallways or elevators, provided that smoking is permitted within Exclusive Use Common Area Decks.

**7.27. Moving In/Out and Contractor Rules:** The Board may adopt Rules regulating the moving of property in and out of a Condominium and means of ingress and egress to and from the Condominium. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for the elevator cabs, disposal of moving boxes, and the posting of collateral

or security to pay for damage to the Residential Common Area or other portions of the Center. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for the elevator cabs, disposal and storage of construction materials and equipment, construction access routes, and the posting of collateral or security to pay for any damage to the Residential Common Area.

**7.28. Compliance with Center Declaration:** Each Owner in the Residential Project and the Residential Condominium Association shall comply with all applicable terms and provisions of the Center Declaration.

## ARTICLE VIII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

**8.1 Insurance:** The Association shall obtain and maintain the following insurance:

### A. Policies:

(1) Except to the extent obtained by the Center Association pursuant to the Center Declaration, a master hazard policy insuring all improvements, equipment and fixtures in the Project including those portions of the Units consisting of all fixtures, installations or additions of the Building housing the Units and all built-in or set-in appliances, cabinets and floor coverings, in the amount designated by Declarant as the original replacement cost thereof based on the standard package of appliances, cabinets and floor coverings offered to all Owners before the Close of Escrow) with policy limits of either: [a] full replacement value of the covered improvements or [b] no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 8.1B, below. The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

- (a) changes in building codes ("ordinance or law endorsement");
- (b) inflation guard coverage;
- (c) demolition coverage;
- (d) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) replacement cost endorsement; and
- (f) primary coverage endorsement.

The Association shall coordinate its insurance programs and policies with the Center Association to the end and with the goal that there will be a minimum of duplication and that there are no gaps or lack of coverage as to insurance matters.

(2) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Residential Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code §1365.7 and § 1365.9;

(3) workers' compensation insurance (statutory limits) to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable, and employer's liability insurance with

limits of not less than \$1,000,000 bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit) and \$1,000,000 bodily injury by disease (each employee). Such policy or policies shall include a waiver of subrogation in favor of the Association and the Declarant;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) directors and officers liability 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;

(6) insurance against water damage, and liability for non-owned and hired automobiles, and such other insurance as the Board in its discretion considers necessary or advisable;

**B. Amount, Term and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Sections 4.3.B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

**C. Representation for Claims.** Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**D. Waiver of Subrogation.** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

**E. Review of Policies.** The Association shall periodically (and not less than annually) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.



**F. Separate Insurance Limitations.** No Owner shall separately insure his Condominium against loss by fire or other casualty covered by any insurance carried by the Association or the Center Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies or the Center Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association or the Center Association does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring in the Units. Each Owner shall insure his personal property and any improvements within the Unit against loss and obtain any personal liability insurance that he desires. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in Section **8.1.A(1)** will provide coverage for such improvements.

**G. Copies of Policies; Notice to Members.** The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section **8.1.A(1)**. The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by Civil Code section 1365(e) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in Civil Code §1365(e), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

**H. Limitation on Liability.** The Association and the Center Association, and their respective directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board of each such Association in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board of the Association immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

**I. Policies and Procedures Regarding the Filing and Processing of Claims:** The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Residential Common Area improvements or any other matters covered by insurance maintained by the Association.

## **8.2. Damage or Destruction:**

**A.** If the interior improvements, fixtures, furniture, furnishings within a Residential Unit are damaged or destroyed, then the Owner of the Residential Unit shall be responsible for repairing and replacing such damaged or destroyed interior improvements, fixtures, furniture, furnishings, with the exception of any Residential Common Area or any Center Structural Elements as defined in the Center Declaration. The Residential Unit Owner shall undertake and complete any such repair or replacement of such damaged or destroyed interior improvements, fixtures, furniture, furnishings within a reasonable time. Any such repair or replacement shall be undertaken pursuant to all requirements of the Residential Declaration and the Center Declaration, the Center Rules and any Residential Rules pertaining to construction of improvements within the Residential Project.

**B.** If Residential Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed pursuant to and in accordance with the provisions of Article 9 of the Center Declaration.

**C.** If pursuant to Article 9 of the Center Declaration, the Residential Project is sold, the portion of any such sales proceeds distributed to the Residential Association shall be distributed to all Owners and their respective mortgagees in proportion to their respective fair market values of their Condominiums in the Residential Project as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described in Article 9 of the Center Declaration. For the purpose of effectuating a sale under this Section 8.2, each Owner grants to the Residential Association an irrevocable power of attorney to sell the entire Residential Project for the benefit of the Owners, to terminate this Residential Declaration and to dissolve the Residential Association. In the event the Residential Association fails to take the necessary steps to sell the entire Residential Project as required hereunder within ninety (90) days following the date of a determination by the Residential Board or an arbitrator of there having occurred a material destruction to the Residential Project, or if within one hundred eighty (180) days following the date of damage or destruction the Residential Board has failed to make a determination as to a material destruction to the Residential Project, any Owner may file a partition action as to the entire Residential Project under California Civil Code § 1359, or any successor statute, and the court shall order partition by sale of the entire Residential Project and distribution of the sale proceeds as provided herein.

**8.3. Condemnation:** If Residential Project improvements are the subject of a condemnation action or eminent domain proceedings, any such action or proceedings shall be subject to the provisions of Article 10 of the Center Declaration. The Residential Association shall represent the Owners of the Residential Project in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Residential Common Area(s), or part thereof. In the event of a taking or acquisition of part or all of the Residential Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Residential Association, or any trustee appointed by the Residential Association, for the use and benefit of the Owners and their mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Residential Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance thereof, he and his mortgagee shall be divested of all interest in the Residential Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Residential Project, or take other action. The remaining portion of the Residential Project shall be resurveyed, if necessary, and this Residential Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of Common Interest of the remaining Owners in the Residential Project. In the event of a taking by eminent domain of any part of the Residential Common Area, the Residential Association shall

participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section 8.2.

## ARTICLE IX. GENERAL PROVISIONS

**9.1. Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. If permitted by law, the Association has the right to record a Notice of Violation against the Condominium of an Owner who is not in compliance with the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The Center Association shall have the right, but not the obligation, to seek enforcement of this Declaration, and in the event that the Center Association should seek such enforcement, the provisions of Section 9.1 and Section 9.16.A shall apply to the Center Association.

**9.2. Invalidity of Any Provision:** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3. Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

### **9.4. Amendments:**

**A. Unilateral Amendment by Declarant:** Notwithstanding any other provisions of this section, at any time prior to the first Close of Escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this section, Declarant (for so long as Declarant owns any portion of the Project) may unilaterally amend this Declaration or by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of DRE, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Project that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law at Division 2, Part 2, Title 7 (commencing with Section

895) of the California Civil Code; and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

**B. Amendment by Members:** After sale of the first Condominium, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the California Department of Real Estate. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County. Notwithstanding anything in this Declaration to the contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code § 1351(e) or any successor statute. No provision of this Residential Declaration provision of this Residential Declaration may be amended, revised, deleted or rescinded in whole or part without the prior written approval of the Center Board and while Declarant owns any Condominium Units within the Center, the prior written approval of the Declarant. Any provisions of this Residential Declaration that refer to or run to the benefit of the Center Association shall not be amended, modified or repealed without the prior written approval of the Center Board.

**C. Amendments Regarding Initiation of Construction Defect Claims:** Notwithstanding anything to the contrary contained in this Declaration, Sections **9.4.C, 5.1.A, 5.1.B, 7.1, 7.9, 9.7, 9.8** and **9.16** shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

**D. Amendments Requiring Consent of Owners:** Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Unit or the interests in the Residential Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests, or Exclusive Use Common Area rights are affected by the amendment, except as authorized in Section **2.2.C**. The provisions of this Section **9.4.D** may not be amended without the unanimous consent of the total voting power of the Association.

**9.5. Encroachment Rights:** If any portion of the Residential Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Residential Common Area or any other portion of the Center due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Residential Common Area or any other portion of the Center shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of any portion of the Building into the Residential Common Area, a correcting modification may be made in the Map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole Owner of the Project) and by Declarant's engineer (in the

case of a condominium plan) and, in addition, by the city engineer (in the case of a subdivision map or parcel map). After Declarant has conveyed Units in the Residential Project, the Residential Project's Association Board, by vote or written approval of a majority of the Directors, shall authorize execution of such certificate of correction.

**9.6. Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Lender on any Condominium made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Governing Documents to the contrary, First Lenders shall have the following rights:

**A. Copies of Governing Documents:** The Association shall make available to Condominium Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or Rules concerning the Project and the Center Declaration, Center Association Articles and Bylaws and Center Rules and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the requested documents which may not exceed the reasonable cost to prepare and reproduce them.

**B. Audited Statement:** Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) any default in performance of obligations under the Governing Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

(3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 9.6.D.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the manner prescribed by Section 9.10.

**D. Consent to Action:**

**(1)** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Governing Documents:

**(a)** the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages, shall be required to terminate the legal status of the Project as a Condominium Project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units is required;

**(b)** the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Mortgages, shall be required to add or amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Exclusive Use Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, Annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; or (xii) any provisions that expressly benefit Mortgage holders, insurers, or guarantors;

**(c)** an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

**(2)** except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), and two-thirds (2/3) of the Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

**(a)** by act or omission, seek to abandon or terminate the Project as a condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

**(b)** change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of

ownership of each Condominium in the Residential Common Area, provided that no Owner's undivided interest in the Residential Common Area may be changed without the consent of that Owner;

(c) partition or subdivide any Condominium;

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

(e) use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to Residential Common Area) for other than the repair, replacement or reconstruction of such Project.

**E. Right of First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his Condominium shall not be subject to any right of first refusal or similar restriction, except in case of an option to repurchase retained by Declarant.

**F. Contracts:** Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

**G. Reserves:** Condominium dues or charges shall include an adequate Reserve Fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments of Regular Assessments, rather than by Special Assessments.

**H. Priority of Liens:** Any Assessment Lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each First Lender who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such First Lender or purchaser at a Foreclosure takes title to the Condominium, except (i) that any such purchaser other than the First Lender shall take the Condominium subject to claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and (ii) for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

**I. Distribution of Insurance or Condemnation Proceeds:** No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

**J. Termination of Professional Management:** When professional management has been previously required by the Governing Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the

Association shall require the prior consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages.

**K. Status of Loan to Facilitate Resale:** Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by Foreclosure or by a deed in lieu of Foreclosure or by an assignment in lieu of Foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

**L. Right to Appear at Meetings:** Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

**9.7. Limitation of Restrictions on Declarant:** Declarant is undertaking the work of construction of residential Condominiums and incidental improvements upon the Project and other improvements within the Center. The completion of that work and the sale, rental, and other disposal of those Condominiums is essential to the establishment and welfare of the Center and Residential Project as a combined commercial and residential community. In order that the work may be completed and the Residential Project be established as a fully developed and occupied residential and commercial community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

**A.** Prevent Declarant, its contractors, or subcontractors from doing within the Center or on the Residential Project or any Condominium whatever is reasonably necessary or advisable in connection with the completion of the work; or

**B.** Prevent Declarant or its representatives from erecting, constructing and maintaining within the Center, the Residential Project (except upon Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing said Center as a combined commercial and residential community and disposing of the Units and other components of the Center in parcels by sale, lease or otherwise; or

**C.** Prevent Declarant from conducting within the Center and on the Residential Project (except upon Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of the Units in the Residential Project as Condominiums and the other components of the Center by sale, lease or otherwise. Declarant may use any unsold Unit as model units or as a sales office. Declarant, subject to the provisions of Section 9.14, may use the Residential Project Recreational Areas in the Residential Common Area for these purposes; or

**D.** Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Center or within the Residential Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof; or

**E.** Subject Declarant to the architectural control provisions for construction of any Condominium or other improvements on the Residential Project or the Center or stated in this Declaration or the Center Declaration or the Residential Rules or Center Rules.



The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

So long as Declarant, its successors and assigns, owns one (1) or more of the Condominiums established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Condominiums (and the Residential Common Area) by Owners, while completing any work necessary to those Condominiums or Residential Common Area.

**9.8. Termination of Any Responsibility of Declarant:** In the event Declarant shall assign or convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant, shall thereafter be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the City contained in the conditions of approval for the Project or the Center, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

**9.9. Owners' Compliance:** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

**9.10. Notice:** Any notice permitted or required by the Declaration or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium of such person if no address has been given to the Secretary.

**9.11. Inspection and Residential Acceptance of Residential Common Area Improvements:** The Association's inspection and acceptance of the Common Area Improvements shall be resolved in accordance with the following procedures:

**A. Walk-Through Inspection:** On completion of all or any portion of the Residential Common Area Improvements in the Project ("Common Improvements"), Declarant shall notify the Association in writing. Within five (5) business days of the notice or such later date as is agreeable to the parties, representatives of the Association and Declarant shall meet for the purpose of inspecting and approving the Common Improvements and identifying any uncompleted or incorrectly completed items. With respect to those items that the parties agree need to be completed or corrected, Declarant shall have a reasonable time thereafter to complete or correct the items. No later than five (5) days after Declarant notifies the Association that it has completed or corrected the items, the items shall be reinspected.

**B. Neutral Expert:** If Declarant disagrees with any claim by the Association that a Common Improvement is not completed or is not completed correctly, Declarant may present the Association with a list of at least two qualified independent neutral experts to inspect the claim. The list shall contain a description of each expert's qualifications. If the Association will not accept any of the experts on the list, the Association shall notify the Declarant within five (5) days of receipt of the list and shall include in the notice a list of at least two experts from which Declarant may choose. The list shall contain a description of each expert's qualifications. If the Association fails to give the notice within the time required, Declarant may select one expert from Declarant's list. If the Association gives a timely response, Declarant shall have five (5) days to select an expert from the Association's list. If Declarant fails to respond in a timely manner, the Association may select an expert from Association's list. If the Declarant responds in a timely manner and will not accept any expert from the Association's list, either party immediately may request that a Special Master as defined herein make the selection. The request shall include both lists, and the Special Master may select from either list or select an expert from outside the list. Any fees charged by the Special Master for this service shall be paid by the requesting party. For purposes herein, a "Special Master" shall be any person with at least three years' experience in construction defect litigation as a Special Master for a superior court in any county in California. The selection by the Special Master shall be binding on the parties.

(1) The reasonable fees of the neutral expert shall be paid by Declarant. Once a neutral expert has been selected, the expert shall be given immediate access to the Common Improvements to inspect the Common Improvements. The expert need only inspect the areas that are readily accessible and shall have no responsibility for inaccessible areas or any problems that are not readily apparent upon a visual inspection of accessible areas. Variations from strict adherence to plans and specifications as modified by any change orders shall not be characterized as defects if the variations are considered minor, are of no consequence, and reflect good workmanship and standard construction practices. The expert shall submit a report within thirty (30) days of completion of the inspection. The report shall constitute conclusive and binding evidence that, except as otherwise provided therein, and except for latent defects and building code violations, if any, the Common Improvements have been constructed in accordance with the plans and specifications as modified by any change orders. Declarant shall have a reasonable time thereafter to complete or correct any items noted in the report.

(2) On written request by either party, the expert shall reinspect such Common Improvements within thirty (30) days after the request to determine if such Common Improvements reasonably conform to the plans and specifications. Such reinspection shall be performed in the same manner as provided for in the first inspection and shall be limited only to those items contained in the report. Promptly after the reinspection is completed, the expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the defects specified in the report which have not been reasonably corrected, if any. If all such defects have been corrected, the Reinspection Report shall state that the Common Improvements reasonably conform to the plans and specifications described herein. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein, the Common Improvements have been constructed in accordance with the plans and specifications described herein. Thereafter, Declarant shall have no further liability, duty or obligation with respect to such Common Improvements except to remedy any defects specified in the Reinspection Report. Additional inspections and Reinspection Reports may be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

**C. Acceptance and Release:** Within ten (10) days after completion of the inspection described in subparagraph A, and no material items need to be corrected or completed or within ten days after all material items have been corrected and completed as evidenced by a report or Reinspection Report, the Board shall accept the Common Improvements, or the portion thereof

covered by the report, in writing and, if applicable, shall release in writing any and all rights under any and all payments and performance, labor and material and completion bonds or other security arrangements (individually and collectively the "Bonds") pertaining to the Common Improvements, or portion thereof. For purposes herein, items shall be considered material items if the cost to correct or complete the items exceeds \$5000.

**D. Bond Release Disputes:** Any disputes regarding the release of the Bonds shall be resolved in accordance with the Bond escrow instructions or, if the instructions are not operative for any reason, in accordance with the provisions of Section 9.16.

**9.12. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements:** Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Condominium, and where the Association is obligee under a bond or other arrangement (hereafter "Common Area Bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Common Area Bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the Common Area Bond. If the Association has given an extension in writing for the completion of any Residential Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the Common Area Bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Common Area Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the Common Area Bond and shall execute any other documents as may be necessary to effectuate the release of the Common Area Bond. The Association shall not condition its approval of the release of the Common Area Bond on the satisfaction of any condition other than the completion of the Residential Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the Conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to Section 9.16 of this Declaration.

**9.13. Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments:** Where the Association is obligee under a bond or other arrangement (hereafter "Assessment Bond") to secure performance of the commitment of Declarant to pay Assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Assessment Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Assessment Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than

twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Assessment Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay Assessments upon unsold Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the Assessment Bond shall return the Assessment Bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the Assessment Bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all regular and Special Assessments levied by the Association against Units owned by the Declarant and that [2] 80% of the Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Assessment Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the Assessment Bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the Assessment Bond a demand for remittance of the Assessment Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the Assessment Bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the Assessment Bond, the return or remittance of the Assessment Bond and other disposition of matters set forth in said escrow instructions with respect to the Assessment Bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in Section 9.16.E hereof.

**9.14. Use of Residential Project Recreational Areas by Declarant:** Declarant shall have the exclusive use of portions of the Residential Project Recreational Areas necessary for the conduct of work, sale, rental and other disposition of Units. This right shall terminate upon the sale of the last Unit in the Project, or upon such earlier date that Declarant ceases to offer Units for sale to the public under an expired Public Report. Declarant and the Board of Directors of the Association shall mutually agree on reasonable terms and conditions for the use of the recreational building, so as to protect the rights of both to have reasonable use of the facility, and to equitably share the cost of maintenance based upon use.

**9.15. Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Unit to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, sexual orientation or national origin.

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

**A. Claims for Declaratory Relief or Enforcement of Project Documents:**

Prior to the filing of an enforcement action for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code sections 1369.510-1369.580. The Board shall comply with the requirements of California Civil Code section 1369.590 by providing Members of the Association annually with a summary of the provisions of Article 2 (commencing with Civil Code section 1369.510) of Chapter 7 of Title 6 (Division 2, Part 4) of the California Civil Code, including the following language: "Failure of a 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 right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law."

**B. Design or Construction Defect Claims:**

Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with: Civil Code sections 895 through 945.5, and Civil Code sections 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in Civil Code sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code section 1368.5 and/or Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Residential Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration. Any recovery by the Association with respect to any damage to or defect in the Residential Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

If the Claim is not resolved by and pursuant to the prelitigation procedures of under Civil Code sections 910 through 938, subject to the provisions of Civil Code section 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of Section 9.16.D [Judicial Reference] and Section 9.16.E of this Declaration [Arbitration of Disputes].

**C. Notices to Members of Legal Proceedings Against Declarant.**

In accordance with Civil Code Section 1368.5, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Residential Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally related to alleged damage to the Residential

Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and
- (3) The time and place of the meeting.

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

**D. Judicial Reference for Certain Disputes:** For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code sections 895 through 938, Civil Code section 1375 and Civil Code section 1375.05, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure sections 638 through 645.2, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.

(2) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in the County;

(c) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The Referee may require one or more pre-hearing conferences;

(f) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(g) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and

(k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court.

(l) If submission of a disputed matter referenced in this Section 9.16.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS"), pursuant to Section 9.16.E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code sections 1369.510-1369.580 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code sections 1369.510-1369.580, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under Sections 9.12 and 9.13 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to Section 9.16.E of this Declaration.

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

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

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

(3) venue of the arbitration to be in the County;

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

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

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

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

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

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code section 895 et seq., as may hereafter amended, may be subject to the non-adversarial procedures set forth in California Civil Code section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code sections 1368.5, 1375, 1375.05 or 1375.1;

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

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act



(9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein;

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

**9.17. Mergers or Consolidations:** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Project, together with the covenants and restrictions established on any other property, as one (1) plan.

**9.18. Power of Attorney:** Each Owner, by accepting and recording a grant deed to a Condominium in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project, as Owner's attorney-in-fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successor and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney in fact to prepare, execute, acknowledge and record any amendment to or restatement of a Condominium Plan, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any city, county, state or federal laws or regulations. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described in this section.

**9.19. Number Gender:** The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

**9.20. Combining of Residential Units:** Subject to all applicable building and fire codes of the City, and only after obtaining the prior written approval of the Residential Board and the Center Board (or the Architectural Committee if such review is delegated by the Center Board to that Architectural Committee), the Owner or Owners of two (2) or more Residential Units which are horizontally or vertically adjacent may physically combine those Residential Units into a single Residential Unit, for purposes of use, if those portions of the Residential Common Area affected by the proposed combination are not required for structural support, serve as seismic support structures, bearing walls or shear walls, and the Owner of such Residential Units pays for any structural, construction, decorative, mechanical or utility charges or costs incurred or necessitated by such combination. Those walls between Residential Units which are non-bearing or shear walls and do not otherwise provide structural support for the Building may be removed by an Owner who is combining Residential Units. Those walls between Residential Units which are bearing walls, shear walls or otherwise provide structural support for the Building shall not be removed; however, the Owner who is combining Residential Units may insert or cut doorways or other openings or penetrations into such bearing, shear or structural walls after approval of the Residential Board and the Center Board, or the Architectural Committee if such review is delegated by the Center Board to that Architectural Committee, based upon written analysis of a qualified structural engineer, architect or other qualified professional that such doorways or other penetrations will not materially adversely affect the structural and seismic capabilities of the Building. No conduits, ducts, pipes, plumbing, wires and other utility installations which serve Residential Units other than the Residential Units being combined may be removed, modified or altered without prior written approval of the Residential Board and the Center Board (or the Architectural Committee if delegated by the Center Association).

**A.** Where an Owner of Residential Units has obtained approval for the combining of Residential Units which are situated along or at the end of a hallway or corridor of the Residential Common Area, such Owner shall be entitled to request and obtain a license and right of use for the use of all or a portion of the hallway or corridor within the Residential Common Area that is adjacent to the combined Residential Units, and shall be entitled to enclose or close off with partition walls and doors such hallway or corridor areas adjacent to the combined Residential Units, provided that such enclosure is consistent with City laws and ordinances and does not impair the access of any other Owners on the floor where such combined Residential Units are located, the Residential Association or the Center Association from access to elevators, staircases or any Utility Facilities located within and serving the floor in which the combined Residential Units are located, as may be required by such Owners on the same floor as such combined Residential Units, or the Residential Association or Center Association. If an Owner owns all of the Residential Units on the floor, the Residential Association may consent to the Owner combining all of the Residential Units on a floor of the Building, and the right of that Owner to license all or part of the hallways and corridor areas of the Residential Common Area on the subject floor of the Building while such Residential Units remain so combined, provided that the Center Association consents to such combination of Residential Units, and provided that the Residential Association and the Center Association are provided reasonable and adequate access to the floor of the Building and all safety equipment, Utility Facilities and other improvements within the Residential Common Area and the Center Common Easement Areas on such floor.

**B.** The Owner or Owners of Residential Units being combined shall indemnify and hold harmless the Center Association, the Residential Association, the members of the Residential Board and the Center Board of directors and any committees of such associations, from any claims arising from any physical construction or modifications to the Building based upon the Owner's combining of Residential Units.

C. The Owner or Owners of the combined Residential Units shall be entitled to cast the votes attributable to each of the combined Residential Units in the same manner as if they had not been combined. A combined Residential Unit shall be assessed based upon the assessments levied upon such Residential Units as if such Residential Units were not combined. Except as expressly approved by the Residential Board, no combined Residential Units may be sold or leased unless all of the Residential Units so combined are sold or leased to the same person or entity, or the combined Residential Units are reconstructed as separate and independent Residential Units as shown on the Plan at the sole cost and expense of the Owner(s) thereof.

D. Residential Units which have been combined can be separated into separate Residential Units provided that prior written notice is given to the Center Board and the Residential Board, and that they are separated along the same boundaries as were originally established in the Plan, and that the utility connections and facilities, walls, ceilings and/or floors which were removed, altered or modified are returned to the conditions as they were in prior to the combination of such Residential Units, or replaced by structural components which have been approved by the Residential Board and the Center Board, or the designated Architectural Committee, if delegated by the Center Association, and any license or licenses for use of Residential Common Areas are terminated in writing.

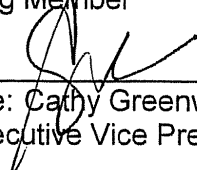
IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this 8<sup>th</sup> day of NOVEMBER, 2007

1160 Mission Associates, LLC, a Delaware Limited Liability Company

By: AGI-TMG MISSION, LLC,  
a Delaware limited liability company  
Its: Administrative Member

By: TMG 1160, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: TMG Partners,  
a California corporation  
Its: Managing Member

By:   
Name: Cathy Greenwold  
Its: Executive Vice President

STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF SAN FRANCISCO

On this 9<sup>th</sup> day of NOVEMBER, 2007, before me, M. OLIVIA HERNANDEZ, a notary public for the state, personally appeared CATHY GREENWOOD, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, 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.

WITNESS my hand and official seal.

*M. Olivia Hernandez*

Notary Public, State of California



**Exhibit "A"**  
**Allocation of Assessments**

The following Association Budget Items are to be allocated and assessed as Special Allocated Common Expenses to the Condominiums in the Project based upon the relative square footage of each of the Condominiums in the Project as set forth in this Exhibit "A".

- Operating
  - Administrative
    - Concierge/Maid Services
  - Utilities
    - PG&E – Natural Gas
    - Water and Sewer
    - Refuse Collection
    - Miscellaneous [3% of above stated items]
- Reserves
  - Mechanical Systems – Water
    - Booster Pumps
    - Main Pumps
    - Circulation Pumps
    - Heat Exchangers
    - Water Heaters
  - Mechanical Systems – Trash
    - Trash Chute
    - Trash Chute Doors
    - Trash Compactor Repairs

The following Center Association Budget Items that are allocated to the Association under the Center Declaration are to be allocated and assessed as Special Allocated Common Expenses to the Condominiums in the Project based upon the relative square footage of each of the Condominiums in the Project as set forth in this Exhibit "A".

- Contributions to Center Association
- Operating
  - Administrative
    - Insurance
    - Miscellaneous [3% of above stated items]
- Reserves
  - Building Exteriors
    - Balcony Repair
    - Glass Balcony Railing
    - Caulking
    - Masonry Painting
    - Masonry Repair
    - Stucco Painting
    - Stucco Repair
  - Roofing System
    - Built Up Roof
    - Roof Drainage
    - Roof Inspection and Repair

All other Common Expenses including those allocated from the Center Association and all other budgeted Association Common Expenses shall be levied equally to the Units.

**Exhibit "A"**  
**Percentage Interests / Allocation of Assessments**

UNIT NO.	LOT NO.	%
501	61	0.528%
502	62	0.341%
503	63	0.337%
504	64	0.341%
505	65	0.294%
506	66	0.511%
507	67	0.460%
508	68	0.528%
509	69	0.341%
510	70	0.337%
511	71	0.341%
512	72	0.293%
513	73	0.504%
601	74	0.593%
602	75	0.341%
603	76	0.576%
604	77	0.341%
605	78	0.465%
606	79	0.511%
608	80	0.580%
609	81	0.341%
610	82	0.280%
611	83	0.341%
612	84	0.294%
613	85	0.504%
614	86	0.469%
701	87	0.528%
702	88	0.341%
703	89	0.337%
704	90	0.341%
705	91	0.294%
706	92	0.511%
707	93	0.465%
708	94	0.528%
709	95	0.341%
710	96	0.337%
711	97	0.341%
712	98	0.294%
713	99	0.504%
714	100	0.469%

UNIT	LOT	%
801	101	0.528%
802	102	0.341%
803	103	0.337%
804	104	0.341%
805	105	0.294%
806	106	0.511%
807	107	0.460%

808	108	0.528%
809	109	0.341%
810	110	0.337%
811	111	0.341%
812	112	0.294%
813	113	0.504%
814	114	0.460%
901	115	0.528%
902	116	0.341%
903	117	0.337%
904	118	0.341%
905	119	0.294%
906	120	0.511%
907	121	0.465%
908	122	0.528%
909	123	0.341%
910	124	0.337%
911	125	0.341%
912	126	0.294%
913	127	0.504%
914	128	0.465%
1001	129	0.528%
1002	130	0.341%
1003	131	0.337%
1004	132	0.341%
1005	133	0.294%
1006	134	0.511%
1007	135	0.465%
1008	136	0.528%
1009	137	0.341%
1010	138	0.337%
1011	139	0.341%
1012	140	0.294%
1013	141	0.504%
1014	142	0.465%

UNIT	LOT	%
1101	143	0.536%
1102	144	0.341%
1103	145	0.337%
1104	146	0.341%
1105	147	0.296%
1106	148	0.511%
1107	149	0.465%
1108	150	0.536%
1109	151	0.341%
1110	152	0.337%
1111	153	0.341%
1112	154	0.296%
1113	155	0.504%
1114	156	0.465%
1201	157	0.536%
1202	158	0.341%
1203	159	0.337%
1204	160	0.341%
1205	161	0.296%
1206	162	0.511%
1207	163	0.460%
1208	164	0.536%
1209	165	0.341%
1210	166	0.337%
1211	167	0.341%
1212	168	0.296%
1213	169	0.504%
1214	170	0.460%
1401	171	0.536%
1402	172	0.341%
1403	173	0.337%
1404	174	0.341%
1405	175	0.296%
1406	176	0.511%
1407	177	0.465%
1408	178	0.536%
1409	179	0.341%
1410	180	0.337%
1411	181	0.341%
1412	182	0.296%
1413	183	0.504%
1414	184	0.465%
1501	185	0.536%
1502	186	0.341%
1503	187	0.337%
1504	188	0.341%
1505	189	0.296%
1506	190	0.511%
1507	191	0.465%



UNIT NO.	LOT NO.	%
1508	192	0.536%
1509	193	0.341%
1510	194	0.337%
1511	195	0.341%
1512	196	0.296%
1513	197	0.504%
1514	198	0.465%
1601	199	0.536%
1602	200	0.341%
1603	201	0.337%
1604	202	0.341%
1605	203	0.296%
1606	204	0.511%
1607	205	0.465%
1608	206	0.536%
1609	207	0.341%
1610	208	0.337%
1611	209	0.341%
1612	210	0.296%
1613	211	0.504%
1614	212	0.465%
1701	213	0.536%
1702	214	0.341%
1703	215	0.337%
1704	216	0.341%
1705	217	0.296%
1706	218	0.511%
1707	219	0.460%
1708	220	0.536%
1709	221	0.341%
1710	222	0.337%
1711	223	0.341%
1712	224	0.296%
1713	225	0.504%
1714	226	0.460%
1801	227	0.536%
1802	228	0.341%
1803	229	0.337%
1804	230	0.341%
1805	231	0.296%
1806	232	0.511%
1807	233	0.465%

UNIT NO.	LOT NO.	%
1808	234	0.536%
1809	235	0.341%
1810	236	0.337%
1811	237	0.341%
1812	238	0.296%
1813	239	0.504%
1814	240	0.465%
1901	241	0.536%
1902	242	0.341%
1903	243	0.337%
1904	244	0.341%
1905	245	0.296%
1906	246	0.511%
1907	247	0.465%
1908	248	0.536%
1909	249	0.341%
1910	250	0.337%
1911	251	0.341%
1912	252	0.296%
1913	253	0.504%
1914	254	0.465%
2001	255	0.541%
2002	256	0.341%
2003	257	0.337%
2004	258	0.341%
2005	259	0.296%
2006	260	0.511%
2007	261	0.465%
2008	262	0.593%
2009	263	0.341%
2010	264	0.279%
2011	265	0.341%
2012	266	0.296%
2013	267	0.504%
2014	268	0.465%
2101	269	0.592%
2102	270	0.341%
2103	271	0.280%
2104	272	0.341%
2105	273	0.296%
2106	274	0.511%
2107	275	0.460%

UNIT NO.	LOT NO.	%
2108	276	0.593%
2109	277	0.341%
2110	278	0.279%
2111	279	0.341%
2112	280	0.296%
2113	281	0.504%
2114	282	0.460%
2201	283	0.541%
2202	284	0.341%
2203	285	0.332%
2204	286	0.342%
2205	287	0.292%
2206	288	0.718%
2208	289	0.541%
2209	290	0.341%
2210	291	0.332%
2211	292	0.342%
2212	293	0.292%
2213	294	0.718%
2301	295	0.541%
2302	296	0.341%
2303	297	0.332%
2304	298	0.342%
2305	299	0.292%
2306	300	0.718%
2308	301	0.541%
2309	302	0.341%
2310	303	0.332%
2311	304	0.342%
2312	305	0.292%
2313	306	0.718%
TOTAL:		100.000%

RECORDING REQUESTED BY:  
Old Republic Title Company

WHEN RECORDED RETURN TO:

Ms. Anita Blumenthal  
Subdivision Consulting  
31 Sequoia Court  
San Carlos, CA 94070

RE: Soma Grand

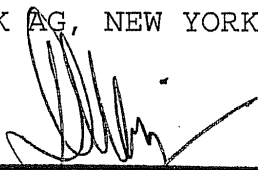
CONSENT AND SUBORDINATION AGREEMENT

The undersigned, HSH Nordbank AG, New York Branch, as Agent, as Beneficiary of that certain Deed of Trust dated September 30, 2005, recorded October 4, 2005, as Instrument No. 2005-1046464, Reel I988, Image 341, Official Records of the County of San Francisco, California executed by 1160 Mission Associates, LLC, a Delaware limited liability company as Trustor, with Chicago Title Company as Trustee, does hereby consent to the execution and recordation of the Declaration of Covenants and Restrictions for The Soma Grand Residences attached/~~recorded~~  
~~\_\_\_\_\_ as Series No. \_\_\_\_\_, Official Records of the County of San Francisco, California~~ does hereby subordinate said Deed of Trust to the Declaration of Covenants and Restrictions for The Soma Grand Residences to the same extent and with the same force and effect, as if said Declaration of Covenants and Restrictions for The Soma Grand Residences, and any proper amendments thereto, which have been approved by Agent in writing or do not require Agent's approval under Section 9.6 thereof, had been executed and recorded prior to the execution and recordation of said Deed of Trust. This Consent shall be deemed Agent's request to the Association under Section 9.6 of the Declaration of Covenants, Conditions and Restrictions for The Soma Grand Residences.

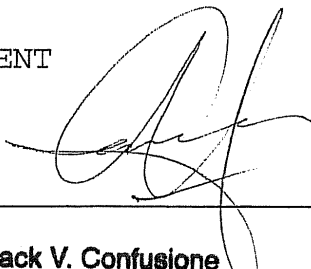
IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination this 15<sup>th</sup> day of May 2007.

HSH NORDBANK AG, NEW YORK BRANCH, AS AGENT

BY:

  
\_\_\_\_\_  
**David P. Messing**  
Senior Vice President  
Real Estate Finance  
HSH Nordbank AG;  
San Francisco Representative Office

BY:

  
\_\_\_\_\_  
**Jack V. Confusione**  
Senior Vice President, Deputy Head of Real Estate  
HSH Nordbank, New York Branch

State of California

SS.

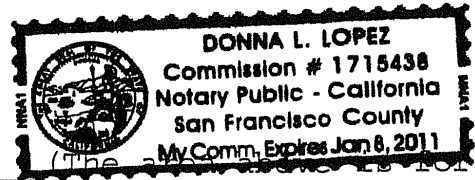
County of San Francisco

On May 14, 2007 before me, Donna L. Lopez, a Notary Public in and for said State, personally appeared David P. Messing, personally known to me (or proved to me on the basis of satisfactory evidence) to 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.

WITNESS my hand and official seal.

Signature

Donna L. Lopez



official notarial seal)

State of New York

SS.

County of New York

On May 15, 2007 before me, Monica Kleinertz  
a Notary Public in and for said  
State, personally appeared Jack V. Confusione,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to 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.

WITNESS my hand and official seal.

Signature Monica Kleinertz

**MONICA KLEINERTZ**  
**NOTARY PUBLIC, State of New York**  
**No. 01KL0143027**  
**Qualified in Nassau County**  
**Commission Expires April 24, 2010**

(The area above is  
for official notarial  
seal)