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

200 BRANNAN,

A CONDOMINIUM COMMUNITY

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS
OF
200 BRANNAN,
A CONDOMINIUM COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS OF 200 BRANNAN, A CONDOMINIUM COMMUNITY (this "**Declaration**") is made this 8th day of October, 2003, by LNR-Lennar Brannan Street, LLC, a California limited liability company ("**Declarant**").

**ARTICLE 1.
INTENTION OF DECLARATION**

1.1 FACTS

This Declaration is made with reference to the following facts:

1.1.1 ***Property Owned by Declarant:*** Declarant is the owner of two (2) adjacent parcels of real property and Improvements thereon located at 200 Brannan Street (the "**Brannan Building**") and 1 Federal Street (the "**Federal Building**") in the County of San Francisco, State of California, described in *Exhibit A* (collectively, the "**Property**").

1.1.2 ***Nature of Community:*** Declarant intends to develop the Property as a common interest development and hereby declares that the Property described in *Exhibit A* is a condominium project within the meaning of California Civil Code Section 1351(f) and in conformity with the provisions of the California Subdivided Lands Law (California Business & Professions Code, Section 11000 *et seq.*) and the Davis-Stirling Common Interest Development Act (California Civil Code Sections 1350-1376, inclusive). The project shall be referred to as the Community as defined in Section 2.16 herein.

Declarant has improved or intends to improve the Property by constructing improvements on it containing two hundred forty (240) residential Units and one (1) commercial Unit in accordance with plans and specifications on file with the City of San Francisco, County of San Francisco, California. By this Declaration, Declarant intends to establish a plan of condominium ownership. Declarant desires to impose on the Community these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners (as defined in Section 2.38 herein) of Condominiums within the Community.

1.2 APPLICABILITY OF RESTRICTIONS

Pursuant to California Civil Code Section 1353, Declarant hereby declares that the Property is subject to the provisions of this Declaration. The Community shall be held, mortgaged, rented, encumbered, used, sold, conveyed, leased, improved, and occupied subject to

the limitations covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Community as a planned development project. Pursuant to California Civil Code Section 1353(a), all of the limitations, easements, restrictions, covenants, conditions stated in this Declaration shall be enforceable as equitable servitudes pursuant to a general plan for the development of the Community for the purpose of enhancing and protecting the value and attractiveness of the Community and every part thereof, in accordance with the plan for the improvement of the Community and the division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall run with the land and shall be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to any part of the described Community, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 2. DEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Declaration, the Map and any grant deed to a Condominium shall have the meanings specified in this Article.

2.1 1 FEDERAL OWNER

The term "1 Federal Owner" shall mean the owners of Residential Units at the Federal Building.

2.2 1 FEDERAL PARKING SPACES

The term "1 Federal Parking Spaces" shall mean the Parking Area at the Federal Building, as shown on the Map. The 1 Federal Parking Spaces shall consist of Parking Spaces, driveways and easements benefiting such Parking Spaces.

2.3 41 FEDERAL UNIT OWNER

The term "41 Federal Unit Owner" shall mean the owners of live/work units located at 41 Federal Street "41 Federal" in the County of San Francisco, State of California.

2.4 200 BRANNAN GARAGE

The term "200 Brannan Garage" shall mean the underground garage at the Brannan Building, as shown on the Map. The 200 Brannan Garage shall consist of Parking Spaces, driveways and easements benefiting the Parking Spaces.

2.5 200 BRANNAN OWNER

The term "200 Brannan Owner" shall mean the owners of Residential Units at the Brannan Building.

2.6 ADDITIONAL CHARGES

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

2.7 ARTICLES

The term "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.8 ASSOCIATION

The term "Association" shall mean 200 BRANNAN OWNERS ASSOCIATION, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.9 ASSOCIATION DOCUMENTS

The term "Association Documents" shall mean the Articles, By-laws, this Declaration, the Rules and Regulations, the current budget of the Association, and the Map.

2.10 BOARD

The term "Board" or "Board of Directors" shall mean the Board of Directors of the Association, and "Director" shall mean a member of the Board.

2.11 BY-LAWS

The term "By-laws" shall mean the By-laws of the Association and any amendments thereto.

2.12 CITY

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

2.13 COMMERCIAL OWNER

The term "Commercial Owner" shall mean the Owner of a Commercial Unit.

2.14 COMMERCIAL UNIT

The term "Commercial Unit" shall mean a Unit used exclusively for commercial purposes and designated as Unit 100 on the Map.

2.15 COMMON AREA

The term "Common Area" shall mean all of the Property, Improvements thereon, and airspace which are not part of any Unit, including the earth parcel shown on the Map.

2.16 COMMUNITY

The term "Community" shall mean the development constructed or to be constructed on the Property.

2.17 CONDOMINIUM

The term "Condominium" shall mean an estate in real property as defined in California Civil Code Sections 783 and 1351(f), consisting of an undivided interest in common in a portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

2.18 CONDOMINIUM PLAN

The term "Condominium Plan" means the Map recorded pursuant to California Civil Code Section 1351 respecting the Community and any amendments to the Map.

2.19 CURRENT OPERATION ACCOUNT

The term "Current Operation Account" shall mean the account where assessments collected for current maintenance and operation shall be deposited.

2.20 DECLARANT

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

2.21 DECLARATION

The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements of 200 Brannan, A Condominium Community, and any amendments hereto.

2.22 ELIGIBLE HOLDER

The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the

Condominium encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Section 9.5.

2.23 EXCLUSIVE USE COMMON AREA

The term "Exclusive Use Common Area" shall mean the following portions of the Common Area that are reserved for the exclusive use of individual Units: (i) certain of the Parking Spaces described on the Map; and (ii) the patios, balconies, yards and decks, if any, described on the Map. Each such Exclusive Use Common Area shall be appurtenant to the applicable Unit and may not be conveyed or transferred apart from the applicable Unit, except for those Parking Spaces, if any, to which Declarant or the Association grants rights to a party other than an Owner. The boundaries or location of the Exclusive Use Common Area are described on the Condominium Plan. Except as expressly provided in this Declaration, no other portion of the Community is an Exclusive Use Common Area.

2.24 FIRST MORTGAGE

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

2.25 FIRST MORTGAGEE

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

2.26 IMPROVEMENTS

The term "Improvements" shall mean everything constructed, installed or planted on the Property subject to this Declaration, including, without limitation, buildings, facilities, the Parking Area, the Lane, streets, driveways, fences, walls, paving, pipes, wires, and grading, and excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company and accepted for maintenance by the public, such entity or utility company.

2.27 INSTITUTIONAL MORTGAGEE

The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veteran's Administration; (iii) the State of California; or (iv) Declarant.

2.28 INVITEE

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

2.29 LANE

The term "**Lane**" shall mean the Common Area between the Federal Building and the Brannan Building, excluding Exclusive Use Common Areas, which will be open to the public (although the Association may have the right, with City approval, to limit such public access).

2.30 LOT

The term "**Lot**" shall mean the City assessor's parcel number designation for a Unit, shown on the Map as "Lot" followed by a number.

2.31 MANAGER

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

2.32 MAP

The term "**Map**" shall mean the following subdivision Maps: (i) "Map of 1 Federal Street, a Residential Condominium Project" recorded in the Official Records of the City on September 30, 2003, as Serial No. H551169, in Book 83 of Condominium Maps at Pages 7-10, and (ii) "Map of 200 Brannan Street, a Residential/Commercial Condominium Project" recorded in the Official Records of the City on September 30, 2003, as Serial No. H551170, in Book 83 of Condominium Maps at Pages 11-23.

2.33 MEMBER

The term "**Member**" shall mean every person or entity holding a membership in the Association. Members shall also be Owners (as defined below)

2.34 MORTGAGE

The term "**Mortgage**" shall mean any duly recorded mortgage or deed of trust.

2.35 MORTGAGEE

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

2.36 NOTICE AND HEARING

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

2.37 OCCUPANT

The term "**Occupant**" shall mean any occupant or tenant (other than an Owner) occupying a Unit or portion thereof at the time or times in question.

2.38 OWNER

The term "Owner" shall mean the holder of record fee title to a Condominium in the Community, including Declarant as to each Condominium owned by Declarant. If more than one person owns a single Condominium, the term "Owner" shall mean all owners of that Condominium. The term "Owner" shall exclude any person having an interest in a Condominium merely as security for performance of an obligation. Owners shall also be Members (as defined above).

2.39 PARKING AREA

The term "Parking Area" shall mean all parking areas, including the 200 Brannan Garage and the 1 Federal Parking Spaces, which are designated on the Map. The Parking Area shall consist of Parking Spaces, driveways and easements benefiting the Parking Spaces.

2.40 PARKING SPACE

The term "Parking Space" shall mean and refer to each portion of the Parking Area used for parking purposes which is designated on the Map by the letter "P" followed by a number. Each Parking Space includes the airspace encompassed within its boundaries. Many Parking Spaces shall be Exclusive Use Common Areas with exclusive rights granted to a particular Unit. Other Parking Spaces shall remain Common Area to be controlled, leased and/or assigned by the Association pursuant to Section 4.3.21 below.

2.41 PERSON

The term "Person" shall mean any natural person, corporation, partnership, trust or other entity, or any combination thereof.

2.42 PUBLIC REPORT

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

2.43 REGULAR ASSESSMENT

The term "Regular Assessment" shall mean any assessment levied against the Owners pursuant to Section 6.2.1.

2.44 REIMBURSEMENT ASSESSMENT

The term "Reimbursement Assessment" shall mean any assessment levied against an Owner pursuant to Section 6.5.

2.45 RESERVE ACCOUNT

The term "Reserve Account" shall mean the account where a portion of the assessments collected as reserves for the maintenance, repair or replacement of capital Improvements shall be deposited.

2.46 RESIDENTIAL OWNER

The term "Residential Owner" shall mean the Owner of a Residential Unit.

2.47 RESIDENTIAL UNIT

The term "Residential Unit" shall mean any Unit which is restricted by Section 4.3 below to be occupied and used for residential purposes only. Residential Units are designated on the Map as Units 101-146, 201-246, 301-343, 401-443 and 501-513 located at the Brannan Building, and Units 1-49 located at the Federal Building.

2.48 RULES AND REGULATIONS

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

2.49 SPECIAL ASSESSMENT

The term "Special Assessment" shall mean any assessment levied against all Condominiums pursuant to Section 6.3.

2.50 STORAGE AREA

The term "Storage Area" shall mean those areas of the Common Area which are designated by the Association as storage areas.

2.51 UNIT

The term "Unit" shall refer to a Separate Interest as defined in California Civil Code Section 1351(l)(2). The boundaries of each Unit are described on the Map. Each Unit includes the airspace encompassed within its boundaries and all improvements, fixtures and utility equipment located therein, including without limitation hot water heaters, space heaters, lighting fixtures and cabinetry, and any Exclusive Use Common Area granted to Owner together with such Unit. Bearing walls, if any, located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. The approximate dimensions of each Unit are shown on the Map as the boundaries of the Unit; however the existing physical boundaries of a Unit as originally constructed or as reconstructed in accordance with the original construction design shall be conclusively presumed to be located entirely within its boundaries. The term "Unit" includes both the Commercial Unit and Residential Units.

ARTICLE 3.
OWNERSHIP AND EASEMENTS

3.1 NON-SEVERABILITY

3.1.1 ***No Separate Conveyance:*** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Condominium owned by the Owner. Each Owner shall have a proportionate undivided interest in the Common Area as shown in *Exhibit B* attached hereto. No Condominium shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Condominium shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance.

3.1.2 ***Judicial Partition:*** There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his or her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment. Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Community if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Unit to maintain an action for partition (as such conditions are presently set forth in California Civil Code Section 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), seventy-five percent (75%) of the Owners of Units shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code Section 66499.21, *et seq.*, or any comparable provisions of law, and to vest title to the property in Owners as tenants in common and order an equitable partition of the property in accordance with the laws of the State of California.

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

3.2 EASEMENTS

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

3.2.1 **Easements on Map:** The Common Area and Units are subject to all easements, dedications and rights of way shown on the Map.

3.2.2 **Easements for Common Area:** Except as set forth in Section 3.2.3 and 3.2.4 below, every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities.

(b) The right of the Association to dedicate and/or grant easements, leases, licenses and permits over all or any portion of the Common Area including, without limitation, leases for Storage Areas.

(c) The grant of any exclusive easements to Owners for Exclusive Use Common Area(s).

3.2.3 **Easements for 200 Brannan Garage:**

(a) Only Owners having exclusive use easement rights to a Parking Space in the 200 Brannan Garage, the Association and such other persons having title, owning or leasing a Parking Space in the 200 Brannan Garage, shall have non-exclusive rights and easements to use such portion or portions of the 200 Brannan Garage as may be reasonably necessary to facilitate use of such person's Parking Space, and of ingress to and egress to and from the Parking Space along driveways constructed on the Brannan Building (the "**Parking and Access Easement**").

(b) Only one (1) Residential Unit at the Federal Building shall have exclusive use easement rights to a Parking Space in the 1 Federal Building. Every other Residential Unit at the Federal Building shall be granted exclusive use easement rights to a minimum of one (1) Parking Space in the 200 Brannan Garage for such 1 Federal Owner's use. Each 200 Brannan Owner shall be granted exclusive use easements rights to a minimum of one (1) Parking Space in the 200 Brannan Garage.

(c) Pursuant to a Parking and Loading Easement Agreement between Declarant and LNR-Lennar 41 Federal, LLC (the "**41 Federal Owner**") recorded March 29, 2002, as instrument number 2002-H137524-00 in the Official Records of the City (the "**Parking and Loading Easement Agreement**"), Declarant granted to each 41 Federal Unit Owner the right to one (1) Parking Space for such 41 Federal Unit Owner's use. Notwithstanding the foregoing, in no event shall Declarant or the Association, as applicable, be obligated to provide in total, more than one (1) Parking Space for each live/work unit at 41 Federal and a total of nine (9) Parking Spaces to the residents of 41 Federal.

(d) Upon the granting of exclusive use easement rights of a Parking Space to a Residential Unit, the Parking and Access Easement shall be appurtenant to and shall pass with the title to every such Residential Unit.

3.2.4 *Intentionally Omitted.*

3.2.5 ***Easement to Parking and Loading Area at 41 Federal:*** Pursuant to the Parking and Loading Easement Agreement, Declarant and every 200 Brannan Owner have been granted a perpetual non-exclusive loading and access easement on, over and across the ground floor of 41 Federal for the purposes set forth below (the "**Loading and Access Easement**"). The Loading and Access Easement area will include (i) two (2) loading spaces located on the ground floor of 41 Federal (the "**Loading Spaces**"), (ii) vehicular ingress and egress to and from the Loading Spaces from Federal Street, and (iii) pedestrian access to and from the Loading Spaces from Federal Street. The purpose of the Loading and Access Easement is to provide access to and from the Loading Spaces located in the area comprising the Loading and Access Easement to and from 41 Federal. There will be no access to the Loading Spaces during construction of 41 Federal. The area comprising the Loading and Access Easement has not yet been designated as of the date of this Declaration, and the 41 Federal Owner shall have the right, in its sole discretion, to designate such area.

3.2.6 ***Easements to Exclusive Use Common Area:*** All easements to Exclusive Use Common Areas are subject to the right of the Association to enter in and upon such Exclusive Use Common Areas as provided by and in accordance with the limitations upon such right as set forth in this Declaration. Each Owner shall have an exclusive right and easement for the use, possession and enjoyment of the Parking Space which is granted to that Owner, including easements for ingress and egress. For those Owners that have been granted an exclusive use easement for a patio, balcony, deck or yard (as shown on the Map), such Owners shall have an exclusive right and easement for the use, possession and enjoyment of such patio, balcony, deck and/or yard that they have been granted, including easements for ingress and egress, as applicable.

3.2.7 ***Encroachment:*** If any portion of the Common Area encroaches on any Unit or any part thereof or any portion of a Unit encroaches on any Common Area 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 said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said 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 Units or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design, or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Unit, or into a required setback area, a correcting modification may be made in the Map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant and, in addition, by the city engineer (in the case of a parcel map).

3.2.8 ***Support, Maintenance and Repair:*** The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Units

through each Unit and the Common Area for the support, maintenance and repair of the Common Area and all Units.

3.2.9 **Easement to Governmental Entities:** All governmental and quasi-governmental entities, agencies, and utilities and their agents shall have a non-exclusive easement over the Common Area and Exclusive Use Common Area for the purposes of performing their duties within the Community.

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

3.2.11 **Association's Easements:** There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Association Documents, including the right to enter upon Common Area, Exclusive Use Common Area and Units in the Community, subject to the limitations contained in this Declaration and the Rules and Regulations.

3.2.12 **Reservation of Easement Rights:** Notwithstanding any property rights, including easements, granted or reserved herein, Declarant hereby reserves such easements over and across the Community, and each Unit in the Community, as may be reasonably necessary for the exercise of the following rights:

(a) The right of Declarant or its agents to enter on any portion of the Community to construct the Improvements, to develop and improve the real property, and to market and sell Condominiums in the Community, provided that such entry does not unreasonably interfere with the Owners' rights to the use of the Community. This easement right will exist for five years from and after the date of recordation of this Declaration.

(b) The right of Declarant to enter any portion of the Community, including any Unit, to make repairs and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld. In the case of entry into a Unit, the prior consent of the Owner shall be required.

(c) The right of the Association to enter any Unit, for the purpose of inspection. Such an entry upon a Unit shall be made only after three (3) days prior written notice to the Owner of such Unit, and after authorization of a majority of the Board.

(d) The right of the Association's agents to enter any Unit in the Community to cure any violation or breach of this Declaration, the By-laws, the Rules and Regulations, or any other Association Document, provided that: (i) at least fifteen (15) days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner or Occupant; and (ii) if such violation or breach cannot be cured within such 15-day period, Owner or Occupant has not begun diligently prosecuting such cure during such 15-day period, or has not completed such cure within a reasonable period of time thereafter.

(e) The right of the Association's agents to enter any Unit in the Community to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Improvements located on the Community, subject to such reasonable rules and regulations as may be promulgated by the Association concerning such entry, including the requirement that Association obtain the Owner's prior consent to entry. In case of emergency the right of entry shall be immediate.

3.3 DURATION

Except for the Easements expressly limited in duration, all Easements shall be deemed to be perpetual, subject only to the amendment or termination of this Declaration.

ARTICLE 4. USES AND RESTRICTIONS

4.1 ADMINISTRATION

The Community will be administered in accordance with the provisions of this Declaration and the By-laws. All Common Area will be subject to the reasonable supervision, operation, management and control of the Association in accordance with this Declaration.

4.2 COMPLIANCE

This Declaration and the By-laws constitute a general scheme to benefit each Owner and may, subject to the provisions of this Declaration, be enforced by Declarant, the Association or any Owner. Each Owner will take and hold right, title and interest in such Owner's Unit or portion thereof subject to all of the covenants and conditions of this Declaration and the By-laws. Each Owner will comply with all of the applicable provisions of this Declaration, the By-laws and any rules and regulations promulgated by the Association, as the same may be amended from time to time. Each Owner shall comply with all of the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to the Owner's use, occupancy, operation, maintenance and repair of the Owner's Unit.

4.3 RESIDENTIAL USE RESTRICTIONS

4.3.1 *Residential Unit Use:* The Residential Units may be used solely for residential purposes. No other use shall be allowed except as specifically permitted below:

(a) A home office may be maintained to conduct a trade or business provided such office complies with the requirements of local laws and regulations governing the maintenance of offices in residential dwelling units, and such home office use shall only be for uses that do not interfere with the quiet enjoyment by other Owners in the Community and does not include visiting clients nor any signage or other displays that are visible from the exterior of the Residential Unit.

(b) Until all of the Residential Units have been sold, Declarant, and its successors or assigns, may use any Residential Unit or Residential Units in the Community owned by Declarant for a model home site or sites and sales or leasing offices.

(c) Use and occupancy of Condominiums shall be limited as provided by State and local law.

(d) No Condominiums shall be owned, leased, occupied or rented pursuant to any time sharing agreement of any kind.

4.3.2 Rental of Residential Units: An Owner not subject to LEU Restrictions (as such term is defined in Section 4.10 below) shall be entitled to rent or lease his or her Residential Unit if:

(a) There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Association Documents and (ii) a failure to comply with any provision of the Association Documents shall constitute a default under the agreement. Owner shall remain liable for any violation or infraction of the Association Documents by the tenant;

(b) The period of the rental or lease is not less than thirty (30) days, and no customary hotel services, such as room service for food and beverage, mail services or the furnishing of laundry and linen for a fee are provided to the tenant;

(c) Owner gives written notice of the tenancy to the Board and has otherwise complied with the terms of the Association Documents; and

(d) Owner gives each tenant a true and complete copy of the Association Documents.

Upon satisfaction of the foregoing conditions, all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Residential Unit for the period of the rental agreement; however, the Owner shall not be relieved of and shall remain responsible for the obligations and duties imposed by this Declaration and any other Association Document. In the event an Owner does lease or rent his or her Residential Unit as herein provided, he or she shall, within seven (7) days of execution of the lease or occupancy agreement, provide the Board or the manager with the landlord/tenant package supplied by the Association.

4.3.3 Animals:

(a) No animals, reptiles, rodents, birds, livestock or poultry of any kind shall be raised, bred or kept in any Unit, or any portion of the Property; except that no more than two (2) domestic dogs or two (2) domestic cats, or one (1) domestic dog and one (1) domestic cat, fish (which shall not be counted in determining the number of pets) and no more than two (2) birds (in birdcages) may be kept as domestic pets in any Residential Unit, provided they are not kept, bred or maintained for any commercial purposes, and they are kept under reasonable control at all times.

(b) The keeping and control of each type of pet shall be expressly subject to such controls and prohibitions as may be adopted by the Board and/or as specified in the Rules and Regulations. The Board shall specifically have the right to prohibit the

maintenance of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners.

(c) No pet shall be allowed in the Common Areas except as may be permitted by the Rules and Regulations. Owners and Occupants shall prevent their pet from soiling any portion of the Common Areas and shall promptly clean up any waste left by their pet.

(d) Each person bringing or keeping a pet upon the Property shall be liable to the other Owners, their family members, guests, invitees, tenants and their respective family members for any damage to persons or property proximately caused by his/her pet. Notwithstanding anything to the contrary contained herein, each owner of a pet shall comply with the applicable ordinances of the City.

4.3.4 **Insurance risks:** Any use which would constitute an unusual fire hazard or which would result in jeopardizing any insurance maintained on any part of the Improvements or would result in an increase in the premium therefor is prohibited.

4.3.5 **Overloading:** Any use beyond the maximum loads the floor of the Improvements are designed to carry, which maximum loads are set forth in the Maintenance Manual defined in Section 4.6 below, unless adequate additional strengthening is undertaken at the sole expense of the Owner committing such use and otherwise in accordance with this Declaration and any use which would place an extraordinary burden on any Common Areas.

4.3.6 **Signs:** No sign shall be displayed to the public view on any Residential Unit or in the Common Areas except (i) signs as are approved by the Board; (ii) signs maintained by Declarant in connection with its initial and ongoing sales activity; and (iii) signs required by legal proceedings. In accordance with California Civil Code Section 712, one (1) "For Sale" or "For Rent" sign for each Residential Unit shall be allowed, provided that such sign is reasonable in size and posted at an appropriate location on the Property as determined by the Board. The Board may adopt rules and regulations concerning the procedure, display, size and location of "For Sale" or "For Rent" signs or notices.

4.3.7 **Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept only in sanitary containers. All trash, garbage and other waste must be in sealed bags before placing in trash chutes or sanitary containers. No toxic or hazardous materials shall be disposed of within the Community by dumping in the trash chutes, garbage containers or down the drains or otherwise (other than those required, in limited quantities, for normal household cleaning and landscaping work). In the event trash recycling is made available to the Community, recyclable materials shall be placed in designated recycling containers.

4.3.8 **Radio and Television Antennas:** No Owner shall alter or modify a central radio antenna, television antenna system, cable television system or microwave or satellite dish, if any, as developed by Declarant and as maintained by the Association, without the express written permission of the Board. No Owner shall construct and/or use and operate his/her own external radio, television antenna or microwave or satellite dish in any portion of the

Common Area outside of Owner's Exclusive Use Common Area. No Owner shall construct and/or use and operate his/her own external radio, television antenna or microwave or satellite dish within Owner's Exclusive Use Common Area without the express written approval of the Board. The Board may not prohibit or restrict the construction and/or use of a satellite dish having a diameter or diagonal measurement of 36 inches or less and which is not visible from any street or Common Areas. Notwithstanding the foregoing, the Board may impose reasonable restrictions for the installation and use of a video or television antenna, including a satellite dish, that do not significantly increase the cost of the system or significantly decrease its efficiency or performance, as set forth in Civil Code section 1376. If the Board requires approval for the installation of such radio, television antenna or microwave or satellite dish, the application for approval shall be processed in the same manner as an application for architectural modification and the issuance of the decision on the application shall not be unreasonably delayed.

4.3.9 Exterior Appearance: All window coverings, or other materials which are visible from the exterior of the Improvements, shall conform to the reasonable Rules and Regulations so as to preserve the uniformity of appearance of the Improvements from the exterior and from areas subject to common use; provided, however that, window coverings visible from the exterior of the Unit shall be restricted to drapes, curtains, shutters or blinds of the off-white or white color. Nothing shall be done or permitted within any Unit which will interfere with or disrupt the uniformity of the exterior appearance of the Improvements.

4.3.10 Floor Covering: Each room (excluding kitchens and bathrooms) in all Units situated above other Units shall have carpeting or rugs covering at least seventy-five percent (75%) of its square footage in order to reduce noise and maximize quiet enjoyment of those Owners whose Units are situated beneath other Units, unless expressly approved by the Board. All Owners covenant and agree to take all reasonable precautions to lower noise transference between Units and to abide by any Rules and Regulations regarding floor coverings. Any mitigation of noise transference which is required of an Owner by the Board shall be the sole responsibility of said Owner. Flooring in each Unit shall only be replaced with flooring that meets or exceeds the sound protection provided by the original flooring installed by Declarant. This may require the use of an acoustical underlayment if the installation of hard surface flooring is desired. It is the sole responsibility of each Owner installing flooring to retain the services of an acoustical consultant and/or architect (to be paid for by such Owner) to ensure that the sound absorbing materials and procedures to be utilized by the Owner in the alteration of such flooring material, meet or exceed the sound absorbing criteria of the flooring being replaced. An Owner who fails to comply with the foregoing floor covering restrictions may be forced to remove the non-conforming floor coverings and replace such floor coverings with other flooring which conforms to the foregoing restrictions at such Owner's sole expense. The Board and the Architectural Committee shall have the authority to require the removal of non-conforming floor coverings, and the Board may include in the Rules and Regulations additional sound attenuation restrictions and guidelines.

4.3.11 Clothes Lines: No exterior clothes lines shall be erected or maintained and there shall be no outside laundry or drying of clothes. No draping of towels, carpet or laundry over railings shall be allowed.

4.3.12 **Nuisance:** No illegal or offensive activity shall be transacted or conducted in any Unit or on any part of the Property, nor shall anything be done thereon which may be a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his or her respective Unit (including without limitation, the use of any equipment or machines, which would cause undue noise, vibration, or emission of noxious odors; barking dogs; or the parking of vehicles in areas other than those designated for parking or licensed for exclusive use), or which shall in any way increase the rate of insurance for the Community, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any Improvements. Owners who have installed access alarm systems within their respective Units shall take reasonable care in preventing consistently false alarms of such system causing an annoyance or nuisance or in any way interfering with the quiet enjoyment of neighboring Owners and Occupants of the Community. Barbecue cooking is prohibited on all decks, patios, balconies and/or yards, if any.

4.3.13 **Patios, Balconies, Yards and Decks:** In addition to the restrictions set forth in Sections 4.3.8, 4.3.11, 4.3.12, 11.14 and elsewhere in this Declaration, no Owner shall (i) store any items on patios, balconies, yards or decks including without limitation furniture (excluding furniture designed specifically for outdoor use), bicycles, barbecues and appliances; (ii) install outdoor speakers on patios, balconies or decks or in yards which would cause noise to interfere with the quiet enjoyment of neighboring Owners or Occupants; (iii) water plants or flowers in such a way to cause water to encroach on below or neighboring patios, balconies, decks or yards; (iv) enclose any patio, balcony, deck or yard with netting or shades; (v) install carpeting on any patio, balcony, deck or yard; or (vi) install additional outdoor lighting. Only furniture listed by the Association on an approved furniture list (or otherwise approved by the Association) may be placed on a patio, balcony, yard or deck.

4.3.14 **Mechanical equipment:** Notwithstanding any provisions contained herein regarding the necessity of Board approval contained in Section 4.3.17, any mechanical equipment installed in any Unit or Exclusive Use Common Area including, but not limited to, any HVAC equipment (if any), shall be insulated and installed so as not to interfere with the quiet enjoyment of other Owners or any other Person. The emission of noise over 40 decibels shall be a violation of this requirement.

4.3.15 **Violation of law:** Any use which constitutes the violation of any law, statute, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Community, including, without limitation, any of the same that regulate or concern hazardous or toxic wastes, substances or materials is prohibited.

4.3.16 **Smoking:** Smoking in any interior Common Area, including any interior Exclusive Use Common Area, is strictly prohibited. The Board may establish rules and regulations regarding smoking in exterior Common Areas.

4.3.17 **Power equipment and Motor Vehicle Maintenance:** No power equipment, hobby shops, vehicle, motorcycle or boat washing, or motor vehicle or motorcycle maintenance or repair (other than in the event of an emergency) shall be permitted on the Community, except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, vibration, dirt or grease, fire

hazard, interference with radio or television reception, and similar objections, as well as compliance with hazardous materials regulations.

4.3.18 ***Hazardous Materials:*** An Owner shall not use or keep in a Unit or the Common Areas, any kerosene, gasoline or inflammable or combustible fluid or material or other hazardous materials (other than those required, in limited quantities, for normal household cleaning or landscaping work). All hazardous waste shall be disposed of properly by each Owner.

4.3.19 ***Liability of Owners for Damage to Common Areas:*** The Owner of each Unit shall be liable to the Association for all damage to the Common Areas or the Improvements thereon, caused by such Owner, Owner's Invitees, or Owner's pet. Liability of an Owner shall be established only after Notice and Hearing before the Board.

4.3.20 ***Vehicle Restrictions:***

(a) Vehicles shall not be parked anywhere in the Community except in Parking Spaces. As long as applicable ordinances and laws are observed, including the requirements of Section 22658.2 of the California Vehicle Code, any vehicle which is in violation of this Declaration may be removed at its owner's expense. Parking Spaces shall be used solely for the parking of standard passenger vehicles, including automobiles, motorcycles, passenger vans designed to accommodate ten (10) or fewer people, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less, and shall not be used for storage purposes. No trailer, camper, mobile home, commercial vehicle, truck (other than pickup trucks permitted above), bus or van designed for more than ten (10) passengers, vehicle having more than two (2) axles, boat, inoperable automobile, or similar equipment shall be parked, stored or permitted to remain upon any area of the Property other than on a temporary basis. Commercial vehicles shall not include sedans (or standard vans or pickup trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive, as determined by the Board. No noisy or smoky vehicles shall be operated upon the Property. No unlicensed motor vehicles shall be operated upon the Property. In the event an alarm system on a vehicle parked in a Parking Space is consistently activated and becomes a nuisance and interferes with the quiet enjoyment of other Owners and Occupants of the Community, Owner or Occupant of such vehicle shall disconnect, repair or adjust such alarm system, or remove its vehicle from the Community.

(b) The Association may install a sign at each vehicular entrance to the Community, containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Community will be removed at the owners expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than seventeen (17) x twenty-two (22) inches in size with lettering not less than one (1) inch in height.

(c) The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by an Owner or Occupant.

(d) The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

4.3.21 **Parking:** All Common Area parking spaces which are neither Exclusive Use Common Areas conveyed as easements appurtenant to a Unit, nor assigned or granted by the Declarant, shall remain under the control of the Association. The Association shall lease or otherwise assign Parking Spaces to 41 Federal Owners to comply with the requirements of the Parking and Loading Easement Agreement as set forth in subsection 3.2.3(c) above. Parking spaces shall be used for parking of permitted vehicles only and not for the parking or storage of boats, trailers or non-mobile vehicles of any description. Garage space may not be converted into any use that would prevent its use as a parking area for the number of vehicles for which the area was originally intended. The Association shall establish rules and regulations regarding the use of unassigned Parking Spaces in the Common Area. Use by Owners of such unassigned Parking Spaces, if available, shall only be valid if established by the Association and such use must be set forth in writing by the Association.

4.3.22 **Handicap Parking:** The Community contains certain Parking Spaces designated as handicap parking spaces which shall be owned by the Association. The Association may lease, assign or otherwise make these spaces available to handicapped Owners or Occupants. An Owner or Occupant of a Unit in the Brannan Building may be leased a handicap parking space located in the Federal Building and an Owner or Occupant of a Unit in the Federal Building may be leased a handicap parking space located in the Brannan Building. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles.

The Association shall have the authority and be responsible for coordinating the leasing of parking spaces pursuant to this section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or Occupant be handicapped and wish to lease a handicap parking space, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence provided.

4.4 COMMERCIAL USE RESTRICTIONS

4.4.1 **Commercial Unit Use:** The Commercial Unit may be used for any commercial purposes as defined in Section 4.4.2 below.

4.4.2 **Commercial Use:** Any Commercial Unit shall not be occupied and used except for commercial purposes by the Owner or his or her lessee. For purposes of this Section 4.4, "commercial purposes" shall include retail sales and businesses, offices, and food preparation, service and/or sales, any or all of which shall comply with and be permitted by applicable federal, state and local laws and regulations.

4.4.3 **Hours of Operation:** The hours of daily operation for the Commercial Unit shall be limited to the period beginning at 6:00 a.m. and ending at 11:00 p.m.

4.4.4 Advertising and Signs: No Owner, or his or her lessee, shall employ an advertising medium which can be heard or experienced outside of the Commercial Unit, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, radios or television. No Owner, or his or her lessee, shall distribute, or cause to be distributed, any handbill or other advertising device in the Common Area or on the public sidewalks or streets adjacent to the Community. Declarant reserves the right to display signs in connection with its initial and ongoing sales activity as provided in Section 4.3.6 above. All signs displayed for public view on the Commercial Unit shall comply with all applicable federal, state and local laws and regulations.

4.4.5 Leasing of a Commercial Unit: Except for the restrictions contained in this Section 4.4.5, there shall be no restriction on the right of an Owner to lease his or her Commercial Unit. An Owner may lease his or her Commercial Unit for the uses allowed by Section 4.4.1 and 4.4.2. Any lease shall provide that it is subject, in all respects, to the provisions of this Declaration, the Articles, and the By-laws.

4.4.6 Customers, Guests and Lessees; Insurance: An Owner shall be responsible for compliance by his or her customers, invitees, guests and lessees, and his or her lessees customers, invitees and guests, with the provisions of this Declaration, the By-laws, and any rules and regulations made by the Board. The Owner of the Commercial Unit or such Owner's lessees shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use, and shall demonstrate proof of such insurance to the Board upon request. If the Owner of the Commercial Unit's (or such Owner's lessees') conduct or use of the Commercial Unit causes any increase in the premiums of the insurance policies carried by the Association pursuant to Article 8, below, then such Owner shall reimburse the Association for any such increase promptly upon being billed therefor.

4.4.7 Restrictions on Board: The Board may not restrict the reasonable use of the Commercial Unit as provided for herein.

4.4.8 Inclusion of Residential Restrictions: The provisions of Sections 4.3.3-4.3.5, 4.3.7, 4.3.8, 4.3.11, 4.3.12, 4.3.14-4.3.17, 4.3.19-4.3.22 are hereby incorporated into this Section 4.4 and shall be restrictions on the use of the Commercial Unit.

4.4.9 Hazardous Materials: An Owner shall not use or keep in a Commercial Unit or the Common Area any kerosene, gasoline or inflammable or combustible fluid or material or other hazardous materials, other than those required or necessary to operate the business for which the Commercial Unit is used and for normal cleaning and landscaping work and provided such business complies with all applicable laws and safety requirements.

4.4.10 Restrictions on Restaurant Use: The Commercial Unit may be used for restaurant purposes subject to the following restrictions:

(a) Noise and/or odors caused from the operation of the restaurant shall be sufficiently controlled such that neither would cause a nuisance to the other Owners or Occupants, or unreasonably disturb any Owner or Occupant's right to the quiet enjoyment of

their premises. The restaurant operator shall undertake all reasonable measures necessary to remove any offensive odors generated by the restaurant and/or its garbage.

- (b) No wood-burning stove may be used in the Commercial Unit.
- (c) All utilities serving the restaurant shall be provided independent from the Community utilities, except for the sprinkler system and life-safety systems.
- (d) No live entertainment may be conducted in the Commercial Unit, unless approved by the Board.
- (e) The grease trap must be cleaned out at least every seven (7) days.
- (f) The owner of the restaurant must maintain an effective pest inspection and extermination program.
- (g) No exterior lights may be kept on between the hours of 11:00 p.m. and 6:00 a.m. daily.

4.4.11 *Use of Common Area Amenities:* No more than two (2) persons at any one time from the Commercial Unit, including Owners, tenants or guests, may use whatever Common Area amenities may be, or may become, a part of the Community, including the fitness center and the community room, if any. Commercial Unit Owner shall designate in writing to the Association the names of such two (2) persons and provide seven (7) days advance written notice to the Association in the event of any changes of such designated persons.

4.5 USE OF COMMON AREA

All use of the Common Area is subject to the Rules and Regulations. Except as otherwise set forth herein, the Common Area is for the sole use, enjoyment and benefit by Owners and their Invitees, and any Persons other than Owners and their Invitees shall be deemed to be trespassers. Subject to the provision of Section 3.2.3, 3.2.4 and 3.2.6, all Owners and their Invitees may enjoy the use of all facilities in the Common Area so long as they abide by the terms of the Association Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior approval of the Board, which approval may be withheld in its sole discretion (other than as otherwise set forth herein with respect to the Exclusive Use Common Area). No alterations or additions to Common Area shall be permitted without the prior approval of the Board, which approval may be withheld in its sole discretion. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior approval of the Board, which approval may be given or withheld in its sole discretion. No Owner shall permit anything to be done or kept in the Common Area which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area. Nothing shall be stored, grown, or displayed in the Common Area that is not approved by the Architectural Control Committee (other than as otherwise set forth herein with respect to the Exclusive Use Common Area).

4.6 MAINTENANCE STANDARD

For the benefit of all Owners and in a manner consistent with the nature of the Community as a first class condominium project, each Owner will use, maintain and operate (or cause to be used, maintained and operated) its respective Unit or portion thereof pursuant to this Declaration and in accordance with the Maintenance Manual Guidelines – Maintenance Recommendations (the “Maintenance Manual”) provided by Declarant to each Owner, and the Association will operate and maintain (or cause to be operated and maintained) those portions of the Community required to be operated and maintained by the Association pursuant to this Declaration and in accordance with the Maintenance Manual provided by Declarant to the Association.

4.7 ALTERATIONS TO UNITS

Owners may alter or remodel the interiors of their Units, excluding load bearing walls, if the alterations do not impair the structural integrity of the Unit and if the Owner complies with the Rules and Regulations, all laws and ordinances regarding alterations and remodeling, and the provisions contained in Article 11 herein. The Community has been constructed utilizing steel framing components. Sheet metal screws must be attached to a steel stud in order to hang or affix heavy objects such as pictures or mirrors on a wall. The use of nails is not recommended. The location of the steel studs can be determined by using a magnet. In the event of construction remodeling or additions to the home, Purchaser is advised to hire a contractor who is familiar with steel-framed construction. No alteration of the floor coverings of the Unit which will result in an increase in sound transmission into any other Unit shall be made. In accordance with Section 4.3.10 above, soft floor coverings must cover at least seventy-five percent (75%) of the square footage on floor levels located above any other Unit, and any hard coverings replaced in kitchen, bath or other areas in such Units are allowed only where such hard coverings were originally installed by Declarant.

4.8 INVITEES

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

4.9 MACHINERY AND EQUIPMENT

No machinery or equipment of any kind shall be maintained or operated within any Unit in the Community except as is customary and necessary in connection with approved construction without the approval of the Board.

4.10 BELOW MARKET RATE UNITS

Certain Units within the Community have been designated limited equity units (“Limited Equity Units,” also known as “Below Market Rate” or “BMR” Units) by the San Francisco Redevelopment Agency (“Agency”) and are subject to additional covenants, conditions and restrictions required by the Agency (“LEU Restrictions”). There are fifty one (51) Limited

Equity Units distributed throughout the Community, which are constructed with different fixtures, finishes and amenities. These Limited Equity Units are to be sold to Owners with income levels between 80-120% (subject to Agency's ability to reduce such levels pursuant to the terms of that certain Owner Participation and Disposition and Development Agreement by and between Agency and Declarant, recorded on January 12, 2001, as Document No. 2001 G889864, as amended ("OP/DDA")) of the median income for the San Francisco Primary Metropolitan Statistical Area as determined by the United States Department of Housing and Urban Development. The sale and uses of the Limited Equity Units and the designated unit numbers are more particularly set forth in the OP/DDA and the Agency's Limited Equity Home Ownership Program Loan Disclosure Information, as well as the Short Form Deed of Trust and Assignment of Rents, the Addendum to Deed of Trust, the Promissory Note Secured by Deed of Trust, the Grant Deed and the Limited Equity Home Ownership Program Declaration of Resale Restrictions and Option to Purchase Agreement for each such Limited Equity Unit. These restrictions will last for at least forty-five (45) years and include, without limitation, prohibiting the leasing of the Limited Equity Units, and limiting re-sales to purchasers who are qualified by the Agency. Such re-sales are to be at prices determined by a formula based on then-current interest rates and median incomes (which may not factor in the total value of capital improvements or appreciation, if any).

ARTICLE 5. IMPROVEMENTS

5.1 MAINTENANCE OF COMMON AREA

The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of the Common Area, including perimeter trees and sidewalks in accordance with the Maintenance Manual provided by Declarant to the Association. The Association shall keep the Common Area and Improvements thereon in good condition and repair in accordance with the Maintenance Manual provided by Declarant to the Association, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure that the Common Area shall be in first class condition. Pursuant to the provisions of this Declaration, the cost of maintaining, repairing and replacing the Common Area shall be assessed against and paid for by the Owners of all Condominiums within the Community. Notwithstanding the foregoing, Owners shall be responsible for cleaning and daily upkeep (as well as the cost of the repair of any damage caused by Owner) of Owner's deck, yard, patio or balcony as set forth in Section 5.8, below.

5.2 ALTERATIONS TO COMMON AREA

5.2.1 *Approval:* Except for actions taken by Declarant pursuant to Section 3.2.12 hereof, only the Board shall construct, reconstruct, refinish or alter any Improvements situated upon the Common Area. Any proposed change in the use of Common Area facilities requires approval of not less than sixty-seven percent (67%) of the Members of the Association.

5.2.2 *Funding:* Expenditures for alterations, maintenance or repairs to an existing capital Improvement for which a reserve has been collected shall be made from the

Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of an Improvement for which no reserve has been collected or if the Reserve Account contains insufficient funds to cover the cost of the proposed Improvement.

5.3 UTILITIES

The Association shall maintain all utilities facilities located in the Common Area or to which the Association has been granted an easement, except for those facilities maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Community except for those metered or charged separately to the Owners.

5.4 LIFE SAFETY/SURVEILLANCE SYSTEMS

The Association shall maintain and repair the life safety system, including, without limitation, fire sprinklers, backup generator, backup water pressure systems, alarms, and magnetic fire doors. In addition the Association shall install, maintain, and repair surveillance systems, including a key card entry system. The Declarant, the Association, and the Board shall not be deemed to have made any representation or warranty to Owner, tenant, or Occupant of a Unit or any invitee thereof, or to any other Person using the facilities or Improvements within the Community 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 use, operation or provision of any 24-hour on-site staff service or safety system, or the failure to provide any 24-hour on-site staff service or safety system, within any portion of the Community.

5.5 LANDSCAPING

The Association shall maintain all landscaping in the Common Areas (other than with respect to patios, balconies, decks and yards) in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other first class condominium projects in the City. Specific restrictions on landscaping may be established in the Rules and Regulations. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.6 PARKING AREA

The Association will operate, maintain, repair, replace and restore the Parking Area including the striping, numbering, plumbing and sump pumps located therein. In discharging its obligations under this Section, the Association may from time to time engage a parking operator. By utilization of a card access or similar system, the Parking Area shall be operated in such a manner as to permit the Owner (or other party) to which a Parking Space has been granted to enjoy his or her rights thereto. Notwithstanding the foregoing, the Declarant may grant rights to third party non-Owners to utilize the Parking Area.

5.7 STORAGE AREA

The Association may designate a portion of the Common Area as the Storage Area. The Association will lease, operate, maintain, repair, replace and restore such Storage Area, if any. By utilization of a card access or similar system, the Storage Area shall be operated in such a manner as to permit the Person to which a space in the Storage Area is leased to enjoy his or her rights set forth in such lease. The Association shall have the authority to lease spaces in the Storage Area; however, only Owners and Occupants may be lessees of such spaces.

5.8 OWNERS' MAINTENANCE DUTIES

The Owners will have the following responsibilities with respect to operation, maintenance and repair:

5.8.1 ***In General:*** Subject to the provisions of Articles 4 and 11 and pursuant to the Maintenance Manual, each Owner will: (i) operate and maintain its Unit (and for those Owners that have been granted an exclusive use easement for a patio, balcony, deck or yard, as shown on the Map, operate such patio, balcony, deck or yard) and all Improvements located therein at all times in good and clean condition and will repair, replace or restore, at its expense, all portions of the Improvements within its Unit (and will reimburse the Association for any repair performed by the Association for damage caused by the Owner or Occupant to a patio, balcony, deck or yard, as applicable) requiring repair, replacement or restoration; (ii) perform its responsibilities in such a manner so as not to disturb unreasonably other Owners or their Occupants; (iii) keep any Parking Space to which such Owner has the right of exclusive use clean and free of oil and litter; and (iv) promptly report to the Association any defect or need for repairs for which the Association is responsible. No Owner shall wash clean patios, balconies, decks or yards with water (and shall instead sweep or dry mop such space).

5.8.2 ***Electric and Gas Consumption:*** Each Owner shall be responsible for the payment of all electric utility bills specific to such Owner's Unit. Each Owner of a Unit located at the Federal Building shall be responsible for the payment of all gas utility bills specific to such Owner's Unit. Each Owner of a Unit located at the Brannan Building shall be billed a monthly charge for gas usage based on a master meter, which charge shall be included in such Owner's monthly Regular Assessment on a pro-rata square foot basis (except for a surcharge with respect to gas stovetops, which will be equal for each such Unit).

5.8.3 ***Responsibility for Damage:*** Subject to Section 5.8, each Owner of a Unit will pay all costs of repair or replacement of any portion of the Community that may become damaged or destroyed by reason of the acts of omissions of such Owner, its Invitees or any of its Occupants. Such payment will be made upon receipt of a demand by the Owner from the Association.

5.9 RIGHT OF ENTRY

The Association may elect to maintain, repair, replace or restore any Improvements or portion thereof within any Unit if (i) the Owner of such Unit has failed, for more than 30 days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance, repair, replacement or restoration of its Unit, and (ii) such failure has

a material effect on the appearance of such Improvements when viewed from any area outside the same, or impairs the structural integrity or building systems of any portion of the Improvements, or has a material adverse effect on the use of another Unit or Common Area for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any such repairs, maintenance, replacement or restoration if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs incurred by the Association in accordance with this Section 5.9, upon receipt of a demand from the Association. In order to effectuate this provision, the Board may enter any Unit in the Community whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations. The costs and expenses of such entry and maintenance or construction may be reimbursed by a Reimbursement Assessment, as set forth in Section 6.5, below.

5.10 WINDOW WASHING

The Association will clean exterior windows periodically. Owners of Units 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 119, 121, 123, 125, 128, 132, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 226, 234, 324, 330, 424, 430, 434, 436, 501, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512 and 513, and any other Units with balconies, decks or patios, must provide access through their units to their respective balconies, decks or patios for such cleaning. Owners of Units with doors, including sliding glass doors, to their balconies, decks or patios are responsible for keeping the windows on such doors clean.

ARTICLE 6. FUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY

Declarant and each Owner covenants and agrees to pay to the Association the assessments and any Additional Charges levied pursuant to this Article 6.

6.1.1 *Liability for Payment:* The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn become liable to pay all such applicable assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Condominium owned by him or her from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Community. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind his or her heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent, and subject to the Additional Charges set forth in Section 6.7.5. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a

successor Owner (including a contract purchaser under an installment land contract) shall relieve any previous Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to his or her Condominium, he or she shall not be liable for any charge thereafter levied against the Condominium. The successor Owner shall be liable for any assessments that become due after the date of transfer of fee title to the Condominium.

6.1.2 **Funds Held in Trust:** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community as provided in this Declaration. Upon the sale or transfer of any Condominium, the applicable Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

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

6.2 REGULAR ASSESSMENTS

6.2.1 **Definitions:** The term "Regular Assessment" shall mean a charge against each Owner and his or her Condominium attributable to such Owner and his or her Condominium for the actual and estimated costs of all things to be done pursuant to the Association Documents by the Association, including, without limitation, the maintenance, repair, operation and restoration of the Common Area.

6.2.2 **Payment of Regular Assessments:** Subject to the limitations set forth in Section 6.4 hereof, Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular Assessments shall commence for all Units the first day of the month following the first close of escrow conveying a Unit in the Community to an Owner.

6.2.3 **Budgeting:** Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and distribute to each Member a pro forma operating budget in accordance with Section 9.1(a) of the By-laws.

The total amount of all charges (other than specially allocated items, described below) shall be charged equally against all Condominiums in the Community as Regular Assessments, subject to the limitations set forth in Section 6.4 hereof, and except for that portion of the Assessments specifically allocated to meet the cost of insurance, painting and roof reserves, and any commonly metered domestic water, gas or electricity. These specially allocated items shall be levied among the Units in the proportion that the square footage of living space for each Unit bears to the square footage of all Units subject to the Declaration as determined by the Condominium Plan and set forth in the budget submitted to the California Department of Real Estate. For the first fiscal year, the budget shall be based upon the budget accepted by the California Department of Real Estate and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually

prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessments to be levied against the Owner's Condominium, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

6.2.4 *Non-Waiver of Assessments:* If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until the Assessments are fixed.

6.3 SPECIAL ASSESSMENTS

Subject to the limitations in the By-laws, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital improvements; (ii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Community or Common Area; or (ii) paying for such other matters as the Board may deem appropriate for the Community. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 LIMITATION ON ASSESSMENTS

6.4.1 *General Limitations:* The Board may not impose an increase in the Regular Assessment for any fiscal year unless the Board has (i) fully complied with all of the provisions of Section 9.1(a) of the By-laws and Civil Code Section 1365(a), as the same may, from time to time, be amended, or (ii) obtained the approval of Members constituting a quorum, casting a majority of the votes at a meeting of Members. For purposes of this Section only, the term "quorum" shall mean more than fifty percent (50%) of the Members of the Association.

6.4.2 *Percentage Limitations:* The Board may not impose, except as provided in this Section 6.4, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting a majority of votes at a meeting or election of the Association. For the purpose of this Section, a quorum means more than fifty percent (50%) of the Owners.

The provisions of this Section 6.4.2, above, shall not apply to Regular Assessment increases or Special Assessments for the following purposes:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible, where a threat to personal safety in the Community is discovered;
- (c) An extraordinary expense necessary to repair or maintain that portion of the Community 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 required under Section 9.1(a) of the By-laws; provided, however, that prior to the imposition or

collection of an assessment under this subparagraph (c), 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 such resolution shall be distributed to the Members with the notice of Assessment; and

(d) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

This Section 6.4.2 incorporates the statutory requirements of California Civil Code Section 1366. If this section of the California Civil Code is amended in any manner, this Section automatically shall be amended in the same manner without the necessity of amending this Declaration.

6.4.3 *Notice of Increase in Assessments:* The Board shall notify the Owners by first-class mail of any increase in the Regular or Special Assessments of the Association. Such notice shall be provided not less than thirty (30) nor more than sixty (60) days prior to the date on which such increased Regular or Special Assessment is due and payable.

6.5 REIMBURSEMENT ASSESSMENTS

The Association shall levy a Reimbursement Assessment against any Owner and his or her Condominium if a failure to comply with the Association Documents has (i) necessitated an expenditure of monies by the Association to bring the Owner or his or her Condominium into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given. Reimbursement Assessments are assessments but they may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium, enforceable by a sale of such interest in accordance with the provisions of Section 2924, 2924(b), and 2924(c) of the Civil Code; provided, however, that this Section does not apply to Additional Charges in connection with delinquent assessments that may be imposed pursuant to Section 6.7.5.

6.6 ACCOUNTS

6.6.1 *Types of Accounts:* Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account, and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the Regular Assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital Improvements into the Reserve Account. Funds received by the Association, but not yet expended, from a compensatory damage award or settlement arising from any legal action for construction or design defects shall also be deposited into the Reserve Account, but shall be separately itemized from assessments collected for replacement and deferred maintenance of capital Improvements.

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

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

6.6.3 **Reserve Account:** The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held, including costs of repairing any construction or design defects for which the Association has received a damage award or settlement. However, the Board may authorize the temporary transfer of money from the Reserve Account to the Current Operation Account to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the Reserve Account within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Association, delay such restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the Reserve Account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits set forth herein. Such a Special Assessment shall be subject to the restrictions set forth in Sections 6.4.2–6.4.3 of this Declaration, but shall not be subject to the limitations set forth in Section 6.4.1 of this Declaration.

The signatures of at least two Directors shall be required for the withdrawal of money from the Reserve Account.

6.7 ENFORCEMENT OF ASSESSMENTS

In accordance with California Civil Code Section 1367.1(d), and in addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

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

6.7.2 **By Lien:** The Association may impose a lien against an Owner's Condominium for the amount of any delinquent assessment(s), plus all Additional Charges (detailed in Subsection 6.7.5 below) by taking the following steps:

(a) **Notice to Owner.** The Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, and shall provide an itemized statement of the charges owed by the Owner, including items on the statement that indicate the principal owed, any late charges and the method of calculation, any attorney fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

(b) **Creation of Lien.** After compliance with the notice requirements of subparagraph (a), the Association may impose a lien against the Owner's condominium, for the amount of any delinquent assessment(s) plus all Additional Charges, by recording a notice of assessment ("**Recorded Notice**"), in the Official Records of the City. Each Owner, including Declarant, hereby authorizes the Association to appoint and designate in the Recorded Notice a person or entity to act as "Trustee," with power of sale, for and on behalf of such Owner, pursuant to California Civil Code Section 1367.1(d), and to appoint, at the Association's discretion, a substitute trustee pursuant to California Civil Code Section 2934(a). The designation of a substitute trustee may be effected by any authorized officer of the Association. Each Owner empowers such Trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Section 1367.1(d) of the California Civil Code as it may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to the Association, as trustee, the power and authority to sell the Condominium of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner hereby waives the benefit of any homestead or exemption laws of this State of California now or then in effect regarding any lien created pursuant to this Declaration. Any lien recorded shall be in favor of the Association.

(c) **Notice of Assessment.** The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a description of the Owner's interest in the Condominium against which the assessment and other sums are levied and the name(s) of the record Owner(s) thereof, and if the lien is to be enforced by non-judicial foreclosure, the name and address of the Trustee authorized by the Association to enforce the

lien. The Notice shall be signed by any officer of the Association or an agent of the Association authorized to do so by the Board and a copy mailed in the manner required by Civil Code §2924(b) to all record owners of the Owner's interest in the Condominium no later than ten days after recordation.

(d) **Priority.** When a Notice has been recorded, such assessment shall constitute a lien on the respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage. Except for the transfer of a Condominium pursuant to a foreclosure proceeding, the sale or transfer of a Condominium shall not affect such a lien.

6.7.3 Foreclosure Under Assessment Lien: Once (i) thirty (30) days has elapsed since the recordation of the Notice and (ii) ten (10) days has elapsed since the mailing or delivery of a copy of the recorded Notice to the Owner, an action in the name of the Association may then be commenced to foreclose the assessment lien in any manner permitted by law, including filing an action for judicial foreclosure, or by recording a notice of default in the form described in Civil Code §2924(c)(b)(1) to commence a non-judicial foreclosure. Any non-judicial foreclosure shall be conducted in accordance with the requirements of Civil Code §§2924, 2924(b), 2924(c), 2924(f), 2924(g), 2924(h), and 2924(j), including any successor statutes thereto, that apply to non-judicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the Trustee in accordance with Civil Code §2934(a).

6.7.4 Certificate of Satisfaction of Lien: Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien required by law.

6.7.5 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

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

(b) **Late Charges:** A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366(c)(2) to compensate the Association for additional collection costs incurred in the event any assessment or other sum is delinquent; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or such greater amount as may, from time to time, be allowed by law;

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

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

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

6.8 STATEMENT OF ASSESSMENT LIEN

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

6.9 SUBORDINATION OF LIEN

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

6.10 CAPITALIZATION OF ASSOCIATION

Upon acquisition of record title to a Unit from Declarant, Each Owner shall contribute to the capital of the Association an amount equal to Two Hundred Fifty Dollars (\$250.00). This amount shall be deposited by the buyer into the purchase and sale escrow and distributed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association. Such capital contributions shall be deposited into the Association's working capital account and Declarant shall be prohibited from using any of such capital contributions to defray any of its expenses, reserve contributions, or construction costs, or to make up any budget deficits while it is in control of the Association.

6.11 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 Regular Assessments made under the provisions of Section 6.2 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.

ARTICLE 7.

MEMBERSHIP IN THE ASSOCIATION

7.1 THE ORGANIZATION

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

7.2 MEMBERSHIP

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

7.3 CLASSES OF MEMBERSHIP

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

7.3.1 ***Class "A" Members:*** Each Owner, except Declarant, shall be a Class A Member. The voting rights of Class A Members shall be as set forth in Section 3.8(a) of the By-laws.

7.3.2 ***Class "B" Member:*** Declarant shall be the sole Class B Member. The voting rights of the Class B Member shall be as set forth in Section 3.8(b) of the By-laws. Class B membership shall expire and shall be converted to Class A membership on the first to occur of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the date which is the fourth anniversary of the first conveyance of a Condominium in the Community.

7.4 POWERS, DUTIES AND AUTHORITY OF THE ASSOCIATION

The Association shall have the powers set forth in the Articles, By-laws and this Declaration. In addition to the duties and powers enumerated in the Articles and By-laws or

elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following duties and obligations:

7.4.1 **Common Area Maintenance:** The Association shall replace, maintain and repair the Common Area, including the Improvements, utilities and facilities located thereon.

7.4.2 **Easements, Permits and Licenses:** The Association shall have the power to grant easements, permits and licenses where necessary for utilities over the Common Area to serve the Common Area and the Units.

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

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

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

7.4.6 **Management:** The Association may hire and discharge, and delegate its authority and powers to, managing agents to the extent deemed advisable by the Board, as well as hire and discharge, or permit such managing agent to hire and discharge, such other employees, agents and independent contractors as may be necessary or proper for the performance of the Association's responsibilities.

7.4.7 **Litigation:** Institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in its own name in matters pertaining to the enforcement of this Declaration, the By-laws or any rules or regulations promulgated by the Association or any other matter affecting any portion of the Improvements with respect to which the Association is responsible for operation, repair, maintenance, restoration or replacement.

7.4.8 **Contracts:** The Association shall contract for goods and/or services as may be necessary to perform its duties, including contracts with Declarant, subject to limitations set forth in Section 7.3(a) of the By-laws, or elsewhere in the Association Documents.

7.4.9 **Improvements:** Cause additional Improvements to be made to the Common Areas.

7.4.10 **Acquisition of Property:** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build up, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. However, except with the vote or written assent of a majority of the voting power residing in members other than Declarant, the Board is

prohibited from incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Any sale of property or improvements owned, directly or indirectly, by the Association for the benefit of Condominiums and Owners shall be subject to the requirements of Article 9.

7.4.11 Limitation of Liability: The purpose of the Association is for the management and maintenance of the Community, and the Association shall not be responsible for the safety of Owners within the Community, except in the event of active gross negligence or willful misconduct of its Directors or officers. No Director, officer, employee, or other agent of the Association, including Declarant or any agent of Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association. The Association shall indemnify its Directors and officers as provided in the By-laws.

7.5 ENFORCEMENT

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

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

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

7.5.3 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

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

7.6 NOTICE AND HEARING

7.6.1 Procedure: If a Member appears to be in violation of any provision of the Association Documents and the provisions of any of the Association Documents require that Notice and Hearing be provided, the Board shall give written notice to the Member specifying the nature of the violation (along with any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board. If the Member's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Board may vote to levy a Reimbursement Assessment if the Board finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notice or to the address of the Member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board.

7.6.2 Determination: After the hearing has taken place, the Board shall (i) determine whether a violation has occurred and, if so, may impose a Reimbursement Assessment against such Owner which shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the Board shall be final. However, nothing herein shall be construed to prevent the Board from making any emergency repairs or taking any other emergency action it deems necessary and providing Notice and Hearing subsequent to such emergency repair or other actions taken by the Board.

7.7 ENFORCEMENT OF BONDED OBLIGATIONS

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

7.7.1 Exemption from Assessments for Common Areas: Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of assessments which are for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of Common Area Improvements that are

not complete at the time assessments commence. Any such exemption from the payment of assessments shall be in effect only until a Notice of Completion of such Common Area Improvements has been recorded or the Common Area Improvements have been placed into use, whichever shall first occur.

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

7.7.3 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members. The meeting shall be held neither less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the vote of more than fifty percent (50%) of the total voting power of the Association residing in Members, other than Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association. The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association. The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the Common Area Improvements.

7.8 DECLARANT'S RIGHTS

For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Community, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights: (a) to access the Association's books and financial records; (b) to inspect the Association's maintenance records; (c) to inspect the Common Areas; (d) to receive notice of all meetings of the Board; (e) to receive notice of, attend and speak at all regular and special meetings of the Board and meetings of the Members; and (f) to receive copies of the minutes of the meetings of the Board and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records.

7.9 TAX-EXEMPT STATUS

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

ARTICLE 8.

INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 INSURANCE

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

8.1.1 ***General Provisions and Limitations:*** All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) **Underwriter:** All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.

(b) **Named Insured:** Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) **Certificate of Insurance:** If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and his or her Mortgagee which shall specify the amount of such insurance attributable to the particular Owner's Unit.

(d) **Authority to Negotiate:** Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(e) **Contribution:** In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) **General Provisions:** To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;

(ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) That no policy may be canceled, invalidated or suspended on account of the acts of any one or more individual Owners;

(iv) That no policy may be canceled, invalidated or suspended on account of the conduct of any Manager, Director, officer or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its Manager, any Owner or Mortgagees;

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

(vi) That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(vii) An agreed amount endorsement;

(viii) A contingent liability from operation of building codes endorsement; and

(ix) An inflation guard endorsement.

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

(h) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

(i) Additional Insurance by Member: No Owner shall separately insure his or her Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the 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 does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring in the Units. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her 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 8.1.2(a) will provide coverage for such improvements. 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. 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 8.1.2(a).

8.1.2 ***Types of Coverage:*** At least the following kinds and amounts of insurance shall be obtained by the Association:

(a) **Property Insurance:** A policy or policies of all risk property insurance for all insurable Common Area Improvements, including buildings and any additions or extensions thereto, all fixtures, machinery, and building service equipment, fences, monuments, lighting fixtures, exterior signs, and personal property owned or maintained by the Association, and including all Units as originally constructed. The policy(s) shall be primary and noncontributing with any other insurance policy covering the same loss. Such policy(s) shall provide coverage against losses caused by fire and all other hazards normally covered under the Special Building Form as published by the Insurance Services Office or equivalent form issued by a specific insurance carrier, with coverage in an amount of not less than one hundred percent (100%) of the full replacement cost of the insurable Common Area Improvements (excluding land, foundations or excavations).

(b) **Endorsements:** The property insurance policy(s) shall contain the following endorsements or their equivalents: an "Inflation Guard Endorsement," a "Contingent Liability Operation of Building Codes Endorsement," an "Agreed Amount Endorsement," a "Demolition Endorsement," glass coverage and any other reasonable endorsements deemed desirable by the Association.

(c) **Liability Insurance:** A combined single limit policy of public liability insurance covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area or any other Association owned or maintained real or personal property. The amount of liability insurance shall not be less than the minimum amounts required by California Civil Code Sections 1365.7 and 1365.9, but in no event shall be less than \$2,000,000.00 per occurrence. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured. The Association shall also carry an umbrella policy with a limit of not less than \$5,000,000.

(d) **Worker's Compensation:** Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Community covering all employees used or hired by the Association in connection with the maintenance and operation of the Community.

(e) **Earthquake Insurance:** The Association shall carry earthquake insurance to the extent required by law; if not required by law, the Association shall not carry earthquake insurance without the approval of a majority of the total voting power of the Members. If the Members elect to require the Association to obtain earthquake insurance, such coverage may be subsequently cancelled on vote of a majority of the total voting power of the

Members. If cancelled, the Association shall make reasonable efforts to notify the Members of the cancellation at least 30 days before the effective date of the cancellation.

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

(g) Directors and Officers: Errors and omissions (liability) insurance covering Directors and officers in the minimum amount of Two Million Dollars (\$2,000,000.00).

(h) Other Insurance: Other types of insurance, including coverage for water damage, liability for non-owned and hired automobiles, which the Board in its discretion determines to be necessary to fully protect the interests of the Members.

8.1.3 *Association's Discretion*: The Association, and its officers and Board, 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 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 immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

8.1.4 *Periodic Insurance Review*: The Board periodically (and not less than once every three (3) years shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar amount of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.2 DAMAGE AND DESTRUCTION

If Community Improvements are damaged or destroyed by fire or other casualty, the Improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) (a) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Community Improvements, (b) available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and (c) three-fourths (3/4) of the total voting power of the Association residing in Members and their respective First Mortgagees vote against such repair or reconstruction; or (2) (a) available insurance proceeds are not sufficient to substantially repair or reconstruct the Improvements within a reasonable time as determined by the Board, (b) a Special Assessment

levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 6.4, and (c) the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the Improvements to be substantially repaired or reconstructed within a reasonable time.

8.2.1 Process for Substantial Repair or Reconstruction: If the Improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Community Improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository, provided that, at a minimum, the construction consultant, general contractor and architect shall certify within ten (10) days prior to any disbursement substantially the following:

(a) All of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(b) The disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials (which shall include a brief description of such services or materials), and the principal subdivisions or categories such services or materials fall under, and the respective amounts paid or due to each of said persons in respect thereof and a brief description of the progress of the work up to the date of said certificate;

(c) The sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(d) No part of the cost of the services and materials described in the foregoing subparagraph (b) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(e) The amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

8.2.2 Process for Limited Repair or Reconstruction: If the cost of repair or reconstruction is less than twenty-five (25%) of the current replacement cost of all the Community improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed Improvement shall immediately take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

8.2.3 Authority to Effect Changes: If any Improvement is damaged or destroyed or in need of renovation or rehabilitation, such Improvement may be repaired or reconstructed in a manner that alters the boundaries (the "**Boundary Alteration**") of the Units or Common Area, provided that the following conditions are satisfied:

(a) the Boundary Alteration has been approved by the Board, by fifty-one percent (51%) of each class of Members and by the Eligible Holders to the extent required in this Declaration;

(b) the Board has determined that the Boundary Alteration is necessary in order to comply with current building code requirements or construction standards, or to improve the quality of the building;

(c) the Boundary Alteration does not materially change the location of any Unit or increase or decrease the interior floor space of any Unit by more than five percent (5%) without the consent of the Unit Owner and the holders of any First Mortgage on that Unit;

(d) the Board has determined that any Boundary Alteration that will relocate or reduce the Common Area will not unreasonably interfere with the rights of the Owners to use and enjoy the Common Area;

(e) the Condominium Plan is amended to reflect the Boundary Alteration to the Units or Common Area; and

(f) such amended Condominium Plan referred to in subparagraph (e) above is duly processed through the City of San Francisco's Department of Public Works and filed for record in the Official Records of the City.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to take any actions necessary or appropriate to effect any Boundary Alteration to any Unit or Common Area as authorized above.

8.2.4 Process if Repair or Reconstruction Not Undertaken:

(a) If the Improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Community, making provision for

the continuance of public liability insurance to protect the interests of the Owners until the Community can be sold, and complying with all other applicable requirements of governmental agencies.

(b) If the failure to repair or reconstruct results in a material alteration of the use of the Community from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Community improvements), the Community shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Mortgagee disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

8.2.5 *Sale of Community*: If the Community is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. The sale must be completed through a judicial partition action pursuant to California Civil Code Section 1359.

(a) For the purpose of effecting a sale under this Section 8.2.5, each Owner grants to the Association an irrevocable power of attorney, as provided in Section 3.1.3 of this Declaration, to sell the entire Community for the benefit of the Owners, to terminate the Declaration and to dissolve the Association.

(b) In the event the Association fails to take the necessary steps to sell the entire Community as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to a material alteration, the entire Community under California Civil Code Section 1359, or any successor statute, and the court shall order partition by sale of the entire Community and distribution of the sale proceeds as provided herein.

(c) Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Community under this Section 8.2.5, provided that this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.3 CONDEMNATION

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their mortgagees as their interest may appear. In the event of an award for the taking of any Condominium in the Community by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof the Owner and such Owner's mortgagee shall be divested of all interest in the Community 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 Community, or take other action. The remaining portion of the Community shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Community. In the event of a taking by eminent domain of any part of the Common Area, the 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 8.2.4.

8.3.1 ***Substantial Taking:*** If there is a substantial taking of the Community (more than fifty percent (50%), the Owners may terminate the legal status of the Community and, if necessary, bring a partition action under California Civil Code § 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in Section 8.2.4.

ARTICLE 9. RIGHTS OF MORTGAGEES

9.1 CONFLICT

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

9.2 LIABILITY FOR UNPAID ASSESSMENTS

Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for

unpaid assessments or charges against the Unit which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

9.3 PAYMENT OF TAXES AND INSURANCE

Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

9.4 TERMINATION OF CONTRACT AND AGREEMENTS

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

9.4.2 Any agreement for professional management of the Community or any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

9.5 NOTICE TO ELIGIBLE HOLDERS

An Eligible Holder is entitled to timely written notice of:

9.5.1 Any condemnation loss or casualty loss which affects either a material portion of the Community or the Unit on which the Eligible Holder holds a First Mortgage;

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

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

9.5.4 Any proposal to take any action specified in this Article or in Section 10.2.2 below;

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

9.6 RESERVE FUND

The Association shall maintain as a reserve fund the Reserve Account which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements which the Association is obligated to maintain.

9.7 INSPECTION OF BOOKS AND RECORDS

Upon request, any Owner or Institutional Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Association Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

9.8 FINANCIAL STATEMENTS

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

9.9 VOTING RIGHTS OF MORTGAGEES

For purposes of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

9.9.1 Unless at least sixty-seven percent (67%) of the Institutional Mortgagees and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Units and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

(b) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Units.

(c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;

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

9.9.2 Any election to terminate the legal status of the Community as a condominium project shall require:

(a) The approval of at least sixty-seven percent (67%) of the Eligible Holders if the election to terminate the legal status is for a reason other than the substantial destruction or a substantial taking in condemnation of the property within the Community; or

(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is due to substantial destruction or a substantial taking in condemnation of the property within the Community.

(c) For purposes of this Section, the Board may imply the approval of an Eligible Mortgagee under the circumstances set forth in the last paragraph of Subsection 10.2.2 hereof.

9.9.3 The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Holder at any time.

9.10 MORTGAGE PROTECTION

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

ARTICLE 10. AMENDMENT

10.1 AMENDMENTS

Prior to the conveyance of the first Condominium, the By-laws and this Declaration may be amended by Declarant alone. After the conveyance 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 sixty-seven percent (67%) of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than Declarant, or, where the two class voting structure is still in effect, a majority of the voting power of each class of membership. Notwithstanding the foregoing, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision.

10.2 MORTGAGEE PROTECTION PROVISIONS

10.2.1 With respect to any action to be taken under this Section which is also governed by provisions of Article 9 that require a specified vote of Owners and/or Mortgagees, the requirements of Article 9 must be satisfied before action may be taken under this Section. After the requirements of Article 9 have been satisfied, a vote to amend this Declaration in compliance with this Section may then be taken.

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

- (a) Voting rights;
- (b) Assessments, assessment liens or the priority of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Insurance policies or fidelity bonds;
- (e) Reallocation of interests in or rights to use the Common Area;
- (f) Responsibilities for maintenance and repair of any portion of the Community;
- (g) The interest of an Owner in the Common Area or any easements by which the Owner or his or her Unit is benefited;
- (h) Change in the permitted use of any Owner's Unit without, in each instance, the affirmative vote or written consent of such Owner;
- (i) Expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community; or
- (j) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium; or
- (k) Restoration or repair of the Community (after a hazard damage or partial condemnation) in a manner other than specified in the Association Documents or the original plans and specifications for the Community; or
- (l) Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs in a manner other than specified in the Association Documents; or

(m) The provisions of Article 9 and this Section 10.2.2.

Any amendment or addition to the Declaration or By-laws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response post-marked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

10.3 AMENDING DOCUMENTS

An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

10.3.1 ***Approved Writing:*** The amendment shall have been reduced to a writing which writing shall have been approved (by affirmative vote or written consent) by the applicable required percentage of Owners.

10.3.2 ***Owners' Execution:*** The written amendment shall be executed and acknowledged by each of the Owners approving the same. For purposes hereof, the President or any Vice President of the Association shall have the authority to execute and acknowledge an amendment to this Declaration on behalf of all of the Members of the Association (it being expressly intended hereby that no amendment to this Declaration shall require execution by any individual Unit Owner).

10.3.3 ***Certificate by Association.*** A written certificate, executed and acknowledged by the President or any Vice President and the Secretary of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Owners and by all First Mortgagees, if any, who are required to approve such amendment pursuant to Section 10.2.2.

10.3.4 ***Recordation of Amendment:*** The amendment shall be effective upon the recordation in the Official Records of the City of an instrument setting forth the terms of the amendment, duly certified and executed by the officers specified in Section 10.3.2 above.

10.4 PRESUMPTION OF VALIDITY

There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to Section 10.3.4 that all votes and consents required to pass the same pursuant to this Declaration were duly obtained (at a duly-called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one year from the date the amendment is recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

ARTICLE 11.
ARCHITECTURAL REVIEW

11.1 GOVERNMENTAL APPROVAL

Nothing contained in this Article shall be deemed to relieve any Owner from obtaining all consents and permits and from otherwise complying with all applicable governmental laws and regulations. Approval by the Association does not satisfy the appropriate approvals that may be required by any governmental agency with appropriate jurisdiction. Any major improvements or construction on or to the exterior of the Community must be approved in writing by the Agency.

11.2 APPLICABILITY

No structure or improvement of any kind shall be commenced, installed, erected, painted, or maintained upon the Community, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any Unit, nor shall any alterations or improvements be made to the interior of any Unit that would involve or impact any structural components or any of the operating facilities in the Community, including but not limited to the HVAC system, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board as provided herein. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation taking into account the impact, if any, on the structural components and/or operating facilities. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Architectural Control Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Architectural Control Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Unit any color desired.

11.3 ARCHITECTURAL CONTROL COMMITTEE

The Architectural Control Committee shall consist of a minimum of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the Community. Declarant reserves to itself the power to appoint a majority of the members of the Committee until ninety percent (90%) of all the Condominiums in the Community have been sold, or until the fifth (5th) anniversary of the issuance of the Public Report for the Community, whichever first occurs. After one (1) year from the date of the issuance of the Public Report, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety (90%) of all of the Condominiums in the Community have been sold, or until the fifth (5th) anniversary date of the issuance of the Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee, who shall be from the membership of the Association.

Members appointed to the Architectural Control Committee by Declarant need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto.

11.4 BASIS FOR APPROVAL OF IMPROVEMENTS

The Board or the Architectural Control Committee may approve an Owner's proposal for improvements only if it finds that (i) the plans and specifications conform to this Declaration and to any architectural standards which have been adopted by the Board in accordance with the By-laws at the time the proposal was submitted and (ii) the proposed alteration or addition will be consistent with the subjective standards of the Community and the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures; and any major exterior improvements have been approved by the Agency.

11.5 FORM OF APPROVALS AND DENIALS

All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal (with all underlying documents attached) which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed unapproved.

11.6 PROCEEDING WITH WORK

Upon approval of the Board the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within three (3) months from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

11.7 FAILURE TO COMPLETE WORK

Completion of the work approved must occur in the six (6) month period following the approval of the work unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. If Owner fails to complete the work within the six (6) month period, the Board shall proceed in accordance with the provisions of Sections 11.8.2 and 11.9 below.

11.8 DETERMINATION OF COMPLIANCE

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

11.8.1 Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

11.8.2 Within sixty (60) days the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

11.9 FAILURE TO REMEDY THE NON-COMPLIANCE

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

11.10 WAIVER

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

11.11 ESTOPPEL CERTIFICATE

Upon completion of the improvements by any Owner, within thirty (30) days after written demand is delivered to the Board by such Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall provide an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate

with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

11.12 LIABILITY

If Directors have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Community; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.13 NON-APPLICABILITY TO DECLARANT

The provisions of this Article shall not apply to any Unit owned by Declarant or prior to its first conveyance of a Condominium to an Owner.

11.14 LANDSCAPING

No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios, yards, or any other Condominium Common Areas or portions of Units which are visible from the street or from any Condominium Common Area by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

11.15 COMBINING UNITS.

Subject to prior written approval of the Board, which approval shall not unreasonably be withheld, the Owner of two or more adjacent Units may combine the Units by creating internal access from one Unit to another through the walls or other portions of the Common Area which separate and divide the individual Units, or separate and divide two or more Units previously joined hereunder, so long as any such work does not impair the structural integrity of the building. All of such work shall be done at the expense of the Owner and shall be performed in accordance with any permits which may be required. All plans must be approved by the Board prior to commencement of work, or by the Architectural Control Committee, in accordance with the terms of this Article 11.

Any Owner combining Units, as provided in this Section, shall indemnify all other Owners and the Association against and hold them harmless from any cost, loss, liability, damage or injury to property or persons arising from or caused by, such work. As a condition to granting its approval, the Board (or any committee appointed by the Board) may impose reasonable terms and conditions, including, without limitation, a requirement that Owner obtain lien and completion bonds to assure lien-free completion of the work. Assessments by the Association shall continue to be made to each Unit and each Unit shall have one (1) vote, whether or not combined (such that an Owner who combines two (2) Units shall have two (2) votes and two (2) separate assessments).

11.16 STRUCTURAL INTEGRITY

Nothing shall be done in or on any Unit or Exclusive Use Common Area which will impair the structural integrity of any Unit or any building on the Community.

ARTICLE 12. DISPUTE RESOLUTION

12.1 REQUIREMENT OF THE BOARD OF DIRECTORS TO PROVIDE NOTICE TO MEMBERS PRIOR TO FILING A CIVIL ACTION

In accordance with California Civil Code Section 1368.4, as hereafter amended, not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Community for alleged damage to the Common Area, alleged damage to a Unit that the Association is obligated to maintain or repair, or alleged damage to a Unit that arises out of, or is integrally related, to damage to the Common Area or a Unit that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) 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 files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

12.2 DISPUTE RESOLUTION

Any disputes between the Association, all or any of the Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (collectively "**Declarant Parties**"), arising under this Declaration or relating to the Community, shall be subject to the following provisions of this Section 12.2 and the following Sections 12.3, 12.4 and 12.5.

12.3 CONSTRUCTION DEFECT DISPUTES

12.3.1 Notice of Construction Claims Statute. California Civil Code Section 895 et seq., as hereafter amended ("**Construction Claims Statute**"), delineates standards for how various components of residential dwelling units should be constructed and function, limits the time frames for bringing various claims against the builder to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the close of escrow for the residential dwelling unit, imposes an obligation on all Owner's to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner or the Association before such Owner or the Association can initiate an adversarial claim and proceed to judicial reference or binding arbitration, as described in Section 12.5 below. **THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S AND THE ASSOCIATION'S LEGAL RIGHTS. OWNERS, ON BEHALF OF THEMSELVES AND AS MEMBERS OF THE ASSOCIATION, ARE ADVISED TO READ THE STATUTE**

CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES AS PROVIDED BELOW.

20.3.1.1 Obligation to Follow Maintenance

Recommendations and Schedules. All Owners and the Association are obligated by Section 907 of the Construction Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Area, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "**Maintenance Recommendations**"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's and the Association's right to recover damages relating to such Unit or Common Area, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

20.3.1.2 Obligation to Retain Documents and Provide

Copies to Successors. All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit.

12.3.2 ***Owners' Construction Defect Claims.*** Prior to the commencement of and legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Common Area, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the close of escrow for the original Owner's purchase of such Owner's Unit from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("**Claimed Defect**"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant's agent for notice of construction defect claims on file with the Secretary of State, which is currently Lennar Corporation, 700 NW 107 Avenue, 4th Floor, Miami, FL 33172, attention General Counsel in writing, with a copy thereof to Declarant at 3130 Crow Canyon Place, Suite 310, San Ramon, CA 94583. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when

Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth in Section 12.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written limited warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and such limited warranty shall be resolved in favor of the limited warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in any written limited warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

12.3.3 Association's Construction Defect Claims. Association's Construction Defect Claims. DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CIVIL CODE SECTION 1375, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Common Area, or any improvements thereon, or any other area within the Community which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of Civil Code Section 1375, as the same may be amended from time to time, or any successor statute thereto. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one

(1) Class A Member other than Declarant. Upon the written request of any Class A member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

12.4 OTHER DISPUTES INVOLVING DECLARANT

Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 12.5 below.

12.5 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

The foregoing procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Community, expressly acknowledge and accept that they are waiving their respective rights to a jury trial.

12.5.1 *Judicial Reference.* Subject to compliance with the provisions of Sections 12.2 through 12.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, or other developer of the Community, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Community, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Area, or alleged damage to Units that arises out of, or is integrally related to the Common Area or Units that the Association is obligated to maintain or repair, shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based, upon any such dispute, the following shall apply:

(a) The proceeding shall be brought and held in the City, unless the parties agree to an alternative venue.

(b) The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services, Inc. ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).

(c) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

(d) The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. 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 in accordance with California Code of Civil Procedure Sections 638 and 640.

(e) The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.

(f) The referee may require one or more pre-hearing conferences.

(g) 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.

(h) A stenographic record of the trial shall be made.

(i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

(j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(k) The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

(l) Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Association or Owner if the dispute had been resolved as a dispute in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.

(m) 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. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

12.5.2 Binding Arbitration of Disputes. If for any reason the judicial reference procedures in Section 12.5.1 are legally unavailable or unenforceable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 12.5.2. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

12.5.3 Applicability of Federal Arbitration Act. The binding arbitration procedures contained in Sections 12.5.2 are implemented for the Community in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C, Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

12.6 DISPUTES RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS

In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

12.7 CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 AND 1375.1

Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05, or 1375.1.

12.8 USE OF DAMAGE AWARD AMOUNTS

Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Community, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

12.9 MISCELLANEOUS

Nothing in this Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

ARTICLE 13.
MISCELLANEOUS PROVISIONS

13.1 TERM OF DECLARATION

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

13.2 CONSTRUCTION OF PROVISIONS

The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development project.

13.3 DECLARATION IS BINDING

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

13.4 SEVERABILITY OF PROVISIONS

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

13.5 GENDER, NUMBER AND CAPTIONS

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

13.6 PROVISION OF ASSOCIATION DOCUMENTS UPON RESALE

Upon the resale of any Condominium by any Owner, the Owner shall supply to the buyer of the Condominium each of the following items: (i) a copy of each of the Association Documents and a copy of the Maintenance Manual; (ii) a copy of the most recent financial statement of the Association; (iii) the statement of assessment lien referred to in Section 6.8 of this Declaration; (iv) a copy of the most recent documents distributed to Members pursuant to Article 9 of the By-laws; (v) a copy of the preliminary list of defects provided to each Member pursuant to California Civil Code Section 1375; and (vi) a true written statement from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments or fees, including a description of any change in such Assessments or fees which have been approved by the Board but have not become due and payable as of the date of such written statement, the amount of any assessments levied against the Owner's Condominium that are delinquent, and information on Additional Charges that may be included in an action to enforce delinquent assessments.

Within ten (10) days after the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a copy of the requested items listed in (i) through (vi) above. The requesting Owner will pay the Association its reasonable fee for the preparation of this information in an amount determined by the Board from time to time.

13.7 EXHIBITS

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

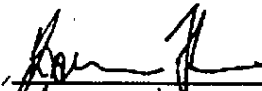
13.8 CONFLICT

In the event of a conflict, the provisions of this Declaration shall prevail over the By-laws and the Rules and Regulations.

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

DECLARANT: LNR-LENNAR BRANNAN STREET, LLC,
a California limited liability company

By: Lennar Southland I, Inc.,
a California corporation
Its: Managing Member

By: 
Name: LAURANCE FLORIO
Title: Agent

STATE OF California)
) ss.
 COUNTY OF Sacramento)

On October 8, 2003, before me, the undersigned notary public in and for said County and State, personally appeared Lawrance Florin

X personally known to me [or]
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.
 WITNESS my hand and official seal.

Jeanne M. Diettinger
 My commission expires on
July 20, 2006

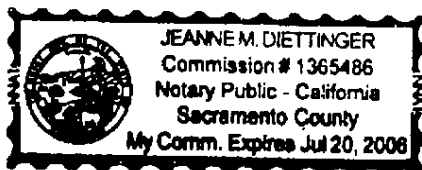


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Brannan Building

All that real property located in the City and County of San Francisco, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SHOWN ON THE MAP ENTITLED "MAP OF 200 BRANNAN STREET, A RESIDENTIAL/COMMERCIAL CONDOMINIUM PROJECT", BEING A SUBDIVISION OF LOT 190 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MARCH 29, 2002 IN BOOK 45 OF PARCEL MAPS, AT PAGE 71, OFFICIAL RECORDS, BEING A PORTION OF ASSESSOR'S BLOCK NO. 3774, ALSO BEING A PORTION OF 100 VARA, BLOCK NO. 351, SAN FRANCISCO, CALIFORNIA, FILED SEPTEMBER 30, 2003, IN BOOK 83 OF CONDOMINIUM MAPS AT PAGES 11 TO 23.

ASSESSOR'S PARCEL NUMBER: Lot 190, Block 3774

Federal Building

All that real property located in the City and County of San Francisco, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SHOWN ON THE MAP ENTITLED "MAP OF 1 FEDERAL STREET, A RESIDENTIAL CONDOMINIUM PROJECT", BEING A SUBDIVISION OF LOT 189 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MARCH 29, 2002 IN BOOK 45 OF PARCEL MAPS AT PAGE 71, OFFICIAL RECORDS, BEING A PORTION OF ASSESSOR'S BLOCK NO. 3774, ALSO BEING A PORTION OF 100 VARA BLOCK NO. 351, SAN FRANCISCO, CALIFORNIA, FILED SEPTEMBER 30, 2003, IN BOOK 83 OF CONDOMINIUM MAPS AT PAGES 7 TO 10.

ASSESSOR'S PARCEL NUMBER: Lot 189, Block 3774

**PROPORTIONATE UNDIVIDED INTEREST
IN COMMON AREA
APPURTENANT TO EACH UNIT**

200 BRANNAN STREET

NO.	UNIT	LOT	%	SQ. FT.
1	100	241	0.41	1194
2	101	242	0.36	1059
3	102	243	0.47	1362
4	103	244	0.47	1362
5	104	245	0.47	1362
6	105	246	0.55	1600
7	106	247	0.56	1625
8	107	248	0.56	1625
9	108	249	0.56	1621
10	109	250	0.56	1621
11	110	251	0.56	1625
12	111	252	0.56	1625
13	112	253	0.55	1617
14	113	254	0.36	1048
15	114	255	0.49	1420
16	115	256	0.38	1050
17	116	257	0.34	990
18	117	258	0.30	881
19	118	259	0.66	1917
20	119	260	0.32	947
21	120	261	0.64	1863
22	121	262	0.30	882
23	122	263	0.30	871
24	123	264	0.30	881

NO.	UNIT	LOT	%	SQ. FT.
25	124	265	0.30	870
26	125	266	0.30	883
27	126	267	0.69	2013
28	127	268	0.32	948
29	128	269	0.30	888
30	129	270	0.75	2202
31	130	271	0.52	1532
32	131	272	0.66	1925
33	132	273	0.30	865
34	133	274	0.65	1912
35	134	275	0.32	925
36	135	276	0.32	930
37	136	277	0.30	866
38	137	278	0.30	866
39	138	279	0.30	866
40	139	280	0.28	817
41	140	281	0.55	1605
42	141	282	0.55	1613
43	142	283	0.55	1620
44	143	284	0.55	1620
45	144	285	0.55	1620
46	145	286	0.55	1620
47	146	287	0.55	1613

% DENOTES PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.

200 BRANNAN STREET, cont.

NO.	UNIT	LOT	%	
48	201	288	0.39	1151
49	202	289	0.43	1261
50	203	290	0.43	1261
51	204	291	0.43	1261
52	205	292	0.51	1500
53	206	293	0.52	1525
54	207	294	0.52	1525
55	208	295	0.52	1525
56	209	296	0.52	1525
57	210	297	0.52	1525
58	211	298	0.52	1525
59	212	299	0.52	1517
60	213	300	0.36	1048
61	214	301	0.25	732
62	215	302	0.27	796
63	216	303	0.36	1050
64	217	304	0.38	1100
65	218	305	0.29	850
66	219	306	0.73	2141
67	220	307	0.31	907
68	221	308	0.64	1863
69	222	309	0.29	850
70	223	310	0.27	783

NO.	UNIT	LOT	%	SQ. FT.
71	224	311	0.70	2042
72	225	312	0.27	782
73	226	313	0.66	1939
74	227	314	0.72	2107
75	228	315	0.28	826
76	229	316	0.66	1914
77	230	317	0.28	826
78	231	318	0.65	1907
79	232	319	0.82	2391
80	233	320	0.47	1366
81	234	321	0.65	1892
82	235	322	0.68	1978
83	236	323	0.69	2006
84	237	324	0.62	1825
85	238	325	0.68	2000
86	239	326	0.66	1940
87	240	327	0.54	1585
88	241	328	0.52	1515
89	242	329	0.52	1522
90	243	330	0.52	1522
91	244	331	0.52	1522
92	245	332	0.52	1522
93	246	333	0.52	1515

200 BRANNAN STREET, cont.

NO.	UNIT	LOT	%	SQ. FT.
94	301	334	0.39	1151
95	302	335	0.43	1261
96	303	336	0.43	1261
97	304	337	0.43	1261
98	305	338	0.51	1500
99	306	339	0.52	1525
100	307	340	0.52	1525
101	308	341	0.52	1520
102	309	342	0.52	1520
103	310	343	0.52	1525
104	311	344	0.52	1525
105	312	345	0.52	1517
106	313	346	0.36	1048
107	314	347	0.25	732
108	315	348	0.27	796
109	316	349	0.36	1050
110	317	350	0.29	851
111	318	351	0.29	850
112	319	352	0.66	1934
113	320	353	0.72	2097
114	321	354	0.64	1863
115	322	355	0.70	2042

NO.	UNIT	LOT	%	SQ. FT.
116	323	356	0.27	783
117	324	357	0.66	1939
118	325	358	0.27	782
119	326	359	0.67	1962
120	327	360	0.72	2107
121	328	361	0.82	2391
122	329	362	0.66	1914
123	330	363	0.65	1892
124	331	364	0.65	1907
125	332	365	0.68	1978
126	333	366	0.47	1366
127	334	367	0.69	2006
128	335	368	0.62	1825
129	336	369	0.68	2000
130	337	370	1.04	3047
131	338	371	0.70	2051
132	339	372	0.52	1522
133	340	373	0.52	1522
134	341	374	0.52	1522
135	342	375	0.52	1522
136	343	376	0.52	1515

% DENOTES PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.

200 BRANNAN STREET, cont.

NO.	UNIT	LOT	%	SQ. FT.
137	401	377	0.39	1151
138	402	378	0.43	1261
139	403	379	0.43	1261
140	404	380	0.43	1261
141	405	381	0.51	1500
142	406	382	0.52	1525
143	407	383	0.52	1525
144	408	384	0.52	1520
145	409	385	0.52	1520
146	410	386	0.52	1525
147	411	387	0.52	1525
148	412	388	0.52	1517
149	413	389	0.36	1048
150	414	390	0.31	902
151	415	391	0.34	990
152	416	392	0.36	1050
153	417	393	0.36	1050
154	418	394	0.34	988
155	419	395	0.61	1787
156	420	396	0.67	1949
157	421	397	0.64	1863
158	422	398	0.66	1928

NO.	UNIT	LOT	%	SQ. FT.
159	423	399	0.33	977
160	424	400	0.66	1939
161	425	401	0.33	976
162	426	402	0.67	1962
163	427	403	0.72	2107
164	428	404	0.82	2391
165	429	405	0.66	1914
166	430	406	0.65	1892
167	431	407	0.65	1907
168	432	408	0.66	1926
169	433	409	0.47	1366
170	434	410	0.63	1831
171	435	411	0.60	1754
172	436	412	0.62	1820
173	437	413	0.99	2903
174	438	414	0.69	2025
175	439	415	0.52	1521
176	440	416	0.52	1521
177	441	417	0.52	1521
178	442	418	0.52	1521
179	443	419	0.52	1514

% DENOTES PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.

200 BRANNAN STREET, cont.

NO.	UNIT	LOT	%	SQ. FT.
180	501	420	0.68	1991
181	502	421	0.53	1554
182	503	422	0.63	1848
183	504	423	0.38	1123
184	505	424	0.78	2273
185	506	425	0.38	1125
186	507	426	0.45	1306
187	508	427	0.90	2627
188	509	428	0.98	2850
189	510	429	0.96	2793
190	511	430	1.16	3380
191	512	431	0.52	1523
192	513	432	0.60	1752

% DENOTES PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.

1 FEDERAL STREET

UNIT	LOT	%	SQ. FT.
1	192	2.22	919
2	193	2.21	915
3	194	2.02	838
4	195	1.86	770
5	196	1.84	762
6	197	1.86	770
7	198	2.45	1018
8	199	2.35	976
9	200	2.43	1010
10	201	2.33	967

**% DENOTES THE PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.**

UNIT	LOT	%	SQ. FT.
11	202	2.48	1029
12	203	2.10	870
13	204	1.80	745
14	205	2.02	838
15	206	1.86	770
16	207	1.84	762
17	208	1.86	770
18	209	2.45	1018
19	210	2.42	1004
20	211	2.16	896
21	212	2.08	865
22	213	2.26	938
23	214	1.70	705
24	215	1.92	798
25	216	1.89	785
26	217	1.98	821
27	218	1.91	792
28	219	1.92	798
29	220	1.83	758

**% DENOTES THE PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.**

1 FEDERAL STREET, cont.

4559316

UNIT	LOT	%	SQ. FT.
30	221	2.42	1005
31	222	2.07	860
32	223	1.81	751
33	224	2.04	845
34	225	1.87	776
35	226	2.18	905
36	227	1.84	764
37	228	2.45	1017
38	229	2.45	1015
39	230	2.15	892
40	231	1.64	680
41	232	1.55	644
42	233	1.59	658
43	234	1.70	705
44	235	1.92	798
45	236	1.89	785
46	237	1.96	815
47	238	1.92	795
48	239	1.92	797
49	240	2.58	1071

% DENOTES THE PERCENTAGE OF UNDIVIDED INTEREST
IN THE OWNERSHIP OF THE COMMON AREA.