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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
OF  
1400 MISSION STREET,  
A CONDOMINIUM PROJECT**

THE TITLE 7 MASTER DECLARATION REFERRED TO IN THIS DECLARATION CONTAINS PROVISIONS FOR JUDICIAL REFERENCE AND BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. JUDICIAL REFERENCE AND ARBITRATION INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY, YOU MUST READ THE ARBITRATION AND JUDICIAL REFERENCE PROVISIONS IN THE TITLE 7 MASTER DECLARATION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
OF  
1400 MISSION STREET,  
A CONDOMINIUM PROJECT**

This Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of 1400 Mission Street (this "Declaration") is made on the date hereinafter set forth by the undersigned (the "Declarant") and is made with specific reference to the following facts:

A. Reference is made to that real property set forth on the legal description attached hereto as Exhibit A and incorporated herein, located in the City and County of San Francisco, State of California, commonly known as 1400 Mission Street (the "Property"), and also known as Parcel 1 on that certain subdivision map entitled Final Map 8135 (the "Map") which was recorded on September 17, 2015, in Condominium Map Book 127, at Pages 197 through 200, inclusive, in the Official Records of the City and County of San Francisco, State of California (the "Official Records").

B. The Map subdivides the real property shown and described thereon into three airspace parcels: Parcel 1 (shown as "Lot 1" on the Map) (the "Residential Parcel"), Parcel 2 (shown as "Lot 2" on the Map) (the "Commercial Parcel") and Parcel 3 (shown as "Lot 3" on the Map) (the "Garage Parcel"). All three Parcels and improvements thereon together comprise the "Project," as further defined in this Declaration. Reference is made to the Reciprocal Easement Agreement (defined below) for further detail concerning the Project and relationship between the three Parcels.

C. Declarant is the owner of that certain residential airspace parcel designated as Lot 1 on the Map which shall be hereinafter referred to as the "Residential Parcel." The Residential Parcel shall be further subdivided as shown on that certain condominium plan entitled "Residential Condominium Plan for 1400 Mission", recorded in the Official Records on 10-13, 2015 as Instrument No. 2015-K143460 (the "Condominium Plan"). The subject of this Declaration is the Residential Parcel shown on the Condominium Plan and further defined herein this Declaration.

D. This Declaration is subject to that certain Declaration of Covenants, Conditions and Restrictions, Reciprocal Easements and Cost-Sharing Agreement for 1400 Mission Street, recorded in the Official Records on 10-13, 2015, as Instrument No. 2015-K143461 (the "Reciprocal Easement Agreement"). References in this Declaration to a particular subject or subjects in the Reciprocal Easement Agreement shall not be interpreted to mean that all provisions or a particular provision in the Reciprocal Easement Agreement must be referred to in this Declaration in order to be effective, as this Declaration is subject to the Reciprocal Easement Agreement.

E. There is located upon the real property comprising the Residential Parcel shown on the Condominium Plan, one multi-story building, together with certain appurtenances. The Declarant intends to establish within the Residential Parcel (Parcel 1), and within building(s) and appurtenances located on the Residential Parcel, condominiums under the provisions of the Davis-Stirling Common Interest Development Act, which provides that a condominium shall consist of an undivided interest in common in a portion of real property coupled with a separate interest in space called a Unit.

F. Declarant intends by this Declaration to impose upon the Residential Parcel beneficial restrictions under a general plan of improvement for the benefit of all of condominiums in the Residential

Parcel and the owners thereof. Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the airspace contained in each unit in the Residential Parcel, and co-ownership interest as a tenant in common with the other individual owners, as hereafter set forth, of the remaining portions of the Residential Parcel.

**NOW, THEREFORE,** Declarant hereby declares that the hereinabove described Residential Parcel and condominium units located therein shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions, easements, servitudes and liens all of which are declared and agreed to be in furtherance of a plan for condominium ownership as described in the Davis-Stirling Common Interest Development Act (Civil Code Section 4000 et seq.) (the "Davis-Stirling Act") for the subdivision, improvement, protection, maintenance and sale of condominiums within or upon the Development and all of which are declared and agreed to be for the purpose of enhancing and protecting the value and attractiveness of the Development and every part thereof. All of such limitations, covenants, conditions, restrictions, easements, servitudes and liens shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Development. Declarant further declares that it is the Declarant's express intent that this Declaration satisfy the requirements of the Davis-Stirling Act.

## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.1     Definitions.**

"Annual Assessment" shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.3.

"Architectural Control Committee" shall mean and refer to the committee by that name established pursuant to this Declaration and Article XI of the Bylaws, as further described in Section 7.25 of this Declaration.

"Articles" shall mean and refer to the Articles of Incorporation of 1400 Mission Street Owners Association, a California nonprofit mutual benefit corporation, as amended from time to time.

"Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, operating and managing the Development which is to be paid by each Owner as determined by the Association in accordance with this Declaration.

"Association" shall mean and refer to the 1400 Mission Street Owners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.

"Association Rules" or "Rules" shall mean and refer to the rules and regulations governing the use and enjoyment of the Common Area which shall be adopted by the Board from time to time.

"BMR Unit" shall mean and refer to a Residential Unit that is a Below Market Rate Unit, and shall have the meaning provided in the Inclusionary Housing Manual.

"BMR Ownership Unit" shall mean and refer to a BMR Unit that is owned, as further defined in the Inclusionary Housing Manual.

"Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

"Budget" or "Association Budget" shall mean and refer to the pro forma operating budget prepared by the Board pursuant to Article 4 of this Declaration and applicable provisions of the Bylaws.

"BRE" means the California Bureau of Real Estate.

"Bylaws" shall mean and refer to the Bylaws of the 1400 Mission Street Owners Association, as amended from time to time.

"City" shall mean and refer to the City and County of San Francisco, State of California.

"Commercial Parcel" shall mean the Commercial Parcel as shown on the Map. The Commercial Parcel is Lot 2 on the Map which is referred to in this Declaration as Parcel 2. The Commercial Parcel is not subject to this Declaration. The Commercial Parcel, and the relationship between the Commercial Parcel, Garage Parcel and Residential Parcel, are more particularly described in the Reciprocal Easement Agreement.

"Commercial Parcel Owner" shall mean the Owner of the Commercial Parcel, and its successors and assigns.

"Commercial Unit" or "Commercial Units" shall mean any condominium unit or units within the Commercial Parcel designated for commercial use. Unless otherwise specifically stated herein this Declaration or the Reciprocal Easement Agreement, the commercial unit(s) located in the Commercial Parcel are not the subject of this Declaration.

"Common Area" shall mean and refer to the Residential Parcel, and all improvements located thereon excepting therefrom the Units as shown on the Condominium Plan, as further described in Section 2.2(b) of this Declaration.

"Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Development and Project and any reserve for such purposes as found and determined by the Board to be reasonable together with all other sums designated common expenses by or pursuant to the Governing Documents. Reference is made to Article 4 of this Declaration for further details.

"Common Interest" shall mean and refer to the proportionate undivided interest in the Common Area which is appurtenant to each Unit as set forth in this Declaration.

"Condominium" shall mean and refer to an estate in real property as defined in California Civil Code Sections 783 and 4125, consisting of an undivided interest as tenant in common in all or any portion of the Common Area together with a separate fee interest in a Unit and any other separate interests in the Development as may be described in this Declaration, in the Condominium Plan or in the deed conveying the Condominium.

"Condominium Building" shall mean and refer to a structure containing Units. There is one (1) Condominium Building within the Development.

"Condominium Plan" shall mean and refer to the diagrammatic floor plan depicting all Units located in the Development, which identifies each Unit and establishes its dimensions pursuant to Civil Code Section 4285, as further described and shown on the Residential Condominium Plan for 1400

Mission Street, which was recorded on 10-13, 2015, as Instrument No. 2015-K143460 in the Official Records, including any amendments or supplements thereto.

"CPI" shall mean and refer to the Consumer Price Index (1982/84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco/Oakland area, or any successor entity thereto.

"Davis-Stirling Act" shall mean and refer to the Davis-Stirling Common Interest Development Act, codified in California Civil Code Section 4000 et seq.

"Declarant" shall mean and refer to the undersigned and such successors and assigns as the undersigned may designate pursuant to the procedure set forth in Section 11.5, or as may otherwise be designated pursuant to Section 11.5; provided, however, notwithstanding anything herein to the contrary, in the event that ULLICO acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale pursuant to the ULLICO Mortgage, ULLICO shall succeed as Declarant and Declarant shall mean and refer to ULLICO and its successors and assigns.

"Declarant Parties" or "Declarant Party" shall mean and refer to Declarant and its current and future affiliates, and the current and future agents, employees, directors, officers, members, managers, partners, trustees, trust beneficiaries, representative contractors and/or subcontractors, of Declarant.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of 1400 Mission Street, and any amendments, modifications or supplements hereto.

"Development" shall mean and refer to the Residential Parcel shown and described as Lot 1 on the Map and as further defined on the Condominium Plan and related improvements now or hereafter existing or erected thereon and all property, real or personal, intended for or used in connection therewith.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.

"Eligible Mortgagee" shall mean and refer to a First Mortgagee who requests notice of certain matters from the Association in accordance with Section 8.2.

"Exclusive Use Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of an Owner or Owners as set forth in Section 2.2(c) of this Declaration, and shall constitute "exclusive use common area" as defined in California Civil Code Section 4145. In addition to those portions of the Common Area set aside as Exclusive Use Common Area pursuant to Section 2.2(c), the following portions of the Common Area designated to serve such Owner's Unit exclusively shall be Exclusive Use Common Area: screens, windows, window boxes, exterior doors leading exclusively to a Unit, door frames and hardware incident thereto for doors leading exclusively to a Unit, any exterior treatment installed by an Owner pursuant to Association approval, and internal and external telephone wiring or other telecommunication, internet, television, utility, water or sewer Line designed to serve a single Unit but located outside the boundaries of the Unit. The Association, acting on behalf of all Owners, may reserve to an Owner(s), in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title), Exclusive Use Common Area for any purpose not inconsistent with the rights of other Owners under this Declaration.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation, or any successor entity thereto.

"First Mortgage" shall mean and refer to any Mortgage which has first priority over all other Mortgages, if any, which encumber, in whole or in part, the same Condominium. For avoidance of doubt, First Mortgage shall include the ULLICO Mortgage until such time as the ULLICO Mortgage is released of record. For purposes of this definition, the fact that the lien of a First Mortgage is inferior to mechanics liens, tax liens, easements and similar limited interests held by government entities, public utilities and the like does not deprive such lien of "first priority" as such term is used herein.

"First Mortgagee" shall mean and refer to any holder of a First Mortgage.

"FNMA" shall mean and refer to the Federal National Mortgage Association, or any successor entity thereto.

"Foreclosure" shall mean and refer to the legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code Section 2924a et seq., or sale by the Court pursuant to California Code of Civil Procedure Section 725a et seq. and any other applicable laws.

"Garage Parcel" shall mean the Garage Parcel as shown on the Map. The Garage Parcel is Lot 3 on the Map which is referred to in this Declaration as Parcel 3. The Garage Parcel is not subject to this Declaration. The Garage Parcel, and the relationship between the Garage Parcel, Commercial Parcel and Residential Parcel, are more particularly described in the Reciprocal Easement Agreement.

"Garage Parcel Owner" shall mean the Owner of the Garage Parcel, and its successors and assigns.

"Governing Documents" shall mean and refer to this Declaration, including the exhibits attached hereto, the Articles, the Bylaws, the Title 7 Master Declaration and any Association Rules as may be established, as any of the foregoing may be amended or supplemented from time to time.

"Including" shall mean "including, without limitation."

"Inclusionary Housing Manual" shall mean and refer to the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual 2013, as amended from time to time.

"Individual Special Assessment" shall mean and refer to a charge against a particular Condominium made for the purpose of obtaining reimbursement of certain expenditures of the Association pursuant to Section 4.6.

"Invitee" shall mean and refer to any person whose presence in the Development is approved by or is at the request of a particular Owner or Occupant of a Unit, including, without limitation, tenants and the family, guests, employees, agents, contractors, customers or licensees of Unit Owners or Occupants.

"Joint Expenses" shall have the meaning set forth in Section 4.8(c) hereof.

"Line" or "Lines", when used in a context pertaining to a utility service or function, shall mean and refer to wires, cables, pipes, conduits and ducts.

“Maintain” or “Maintenance” whether capitalized or not, shall mean and refer to “maintain, repair and replace” and “maintenance, repair and replacement,” respectively, and shall include, without limitation, taking all actions reasonably necessary to comply with (i) any maintenance manual applicable to an Owner or the Association, (ii) any warranty or limited warranty provided to an owner or the Association, (iii) any manufacturer’s warranty or manual provided to an owner or the Association, (iv) commonly accepted maintenance practices of a prudent Owner or Association, and (v) the Title 7 Master Declaration; provided, however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

“Map” shall mean and refer to the recorded final subdivision map referenced in Recital A of this Declaration, and shall also include any amendments thereto.

“Materially Damaged” shall mean and refer to any damage for which the cost of repair or reconstruction, as determined by bids solicited and obtained from at least two (2) licensed contractors selected by the Board, is equal to or greater than One Million Dollars (\$1,000,000.00) as adjusted by a fraction whose numerator is the CPI last published as of the date of such damage or destruction and whose denominator is the CPI last published as of the date of recordation of this Declaration.

“Member” shall mean and refer to each Owner holding a membership in the Association as herein provided.

“MOHCD” shall mean and refer to the City and County of San Francisco Mayor’s Office of Housing and Community Development.

“Mortgage” shall mean and refer to a mortgage or a deed of trust encumbering a Condominium. For avoidance of doubt, Mortgage shall include the ULLICO Mortgage until such time as the ULLICO Mortgage is released of record.

“Mortgagee” shall mean and refer to a beneficiary of, or the holder of, a beneficial interest in a deed of trust as well as a mortgagee.

“Mortgagor” shall mean and refer to a Person who encumbers their Condominium with a Mortgage or deed of trust.

“Occupant” shall mean and refer to a Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative.

“Owner” or “Owners” shall mean and refer to the record holder or, if more than one, holders of title of a Condominium in the Residential Parcel. This shall include any Person holding a fee simple title to any Condominium, including Declarant, but shall exclude certain contract sellers and Persons having any interest merely as security for the performance of an obligation. If a Condominium is sold in a recorded “real property sales contract”, as defined in Section 2985 of the California Civil Code, to a purchaser who resides in the Unit, the resident purchaser (rather than the contract seller who is the fee owner) shall be considered the Owner so long as that person resides in the Unit as a contract purchaser.

“Parcel 1” shall mean the Lot 1 as shown on the Map. Parcel 1 is the Residential Parcel.

“Parcel 2” shall mean the Lot 2 as shown on the Map. Parcel 2 is the Commercial Parcel.

“Parcel 3” shall mean the Lot 3 as shown on the Map. Parcel 3 is the Garage Parcel.

"Parcel Owner" shall mean and refer to the Residential Parcel Owner, the Commercial Parcel Owner and/or the Garage Parcel Owner.

"Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee or other legal entity.

"Project" shall mean all of the real property and improvements shown and described on the Map, and shall include the entire mixed-use project comprised of the Residential Parcel (defined herein as the "Development"), Commercial Parcel and Garage Parcel.

"Property" shall have the meaning ascribed thereto in Recital A of this Declaration.

"Public Report" shall mean and refer the official document and permit issued pursuant to the Subdivided Lands Act (Business & Professions Code §§ 11000 et seq.) by the California Bureau of Real Estate authorizing the offering of Condominiums for sale to the public.

"Reciprocal Easement Agreement" means that certain Declaration of Covenants, Conditions and Restrictions, Reciprocal Easements and Cost-Sharing Agreement for 1400 Mission Street, recorded in the Official Records on 10-13, 2015 as Instrument No. 2015-143461, against the Residential Parcel, Commercial Parcel and Garage Parcel. Reference is made to the Reciprocal Easement Agreement for further details concerning the relationship between the Residential Parcel (Parcel 1), Commercial Parcel (Parcel 2) and Garage Parcel (Parcel 3).

"Residential Parcel" shall mean the Residential Parcel as shown on the Map. The Residential Parcel is Lot 1 on the Map which is referred to in this Declaration as Parcel 1.

"Residential Parcel Owner" shall mean the owner of the Residential Parcel, and its successors and assigns.

"Residential Unit" or "Residential Units" shall mean and refer to any Condominium Unit designated for residential use, as shown on the Condominium Plan and as further described in Section 7.1 of this Declaration.

"Section 124(f) Units" shall mean and refer to those twenty-three (23) residential units in the Development that are subject to Planning Code Section 124(f) with respect to their affordability requirements. The Section 124(f) Units are only designated as affordable units for a period of twenty (20) years from the date of lease to the first occupant of the applicable Section 124(f) Unit. After expiration of the twenty year period, the Section 124(f) Units shall be released from the affordability requirements and regulations imposed by the San Francisco Planning Department, MOHCD or other governmental agency or department and shall be market-rate housing units; provided that such units shall otherwise remain subject to this Declaration and the Governing Documents. During such time as the Section 124(f) Units are designated as affordable units, those units shall be subject to the terms and conditions of the applicable regulations of the San Francisco Planning Department and MOHCD. Reference is made to that certain Letter of Determination issued by the Zoning Administrator of the City and County of San Francisco Planning Department dated January 20, 2015 for further detail concerning the Section 124(f) Units in the 1400 Mission Street Development.

"Section 124(f) Units Letter of Determination" shall mean and refer to that certain Letter of Determination issued by the Zoning Administrator of the City and County of San Francisco Planning Department dated January 20, 2015 concerning the Section 124(f) Units in the 1400 Mission Street Development.

“Special Allocation Assessment” shall mean and refer to an Assessment against certain Condominiums in the Development which is levied pursuant to Section 4.8.

“Special Assessment” shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.5.

“Supplementary Declaration” shall mean a declaration of covenants, conditions and restrictions, or similar instrument, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property and thereafter by the Association to do any or all of the following: (a) make modifications or adjustments to the description of the Property to reflect Declarant’s development plan or any lot line adjustments, parcel maps and final subdivision maps and/or conditions or requirements imposed by governmental agencies, (b) identify areas referenced in this Declaration to be maintained by the Association or Owners and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner, (c) make such other complementary additions and/or modifications necessary to reflect the different character of improvements on the Property, (d) impose additional covenants and restrictions on the Property, (e) conform this Declaration or any previously recorded Supplementary Declarations to applicable laws or any conditions of approval imposed by any governmental agency or governmental entitlements, (f) conform this Declaration and other Governing Documents to the requirements of any state or federal agencies, and/or (g) make corrections to the provisions of this Declaration or any previously recorded Supplementary Declaration.

“Title 7 Master Declaration” shall mean and refer to that certain Master Declaration for Title 7 Issues and Dispute Resolution for 1400 Mission Street, recorded against the Development in the Official Records of the City and County of San Francisco, State of California, including any supplement, amendment or notice of addition thereto. Reference is made to said Title 7 Master Declaration for further details concerning its terms and conditions.

“ULLICO” shall mean and refer to The Union Labor Life Insurance Company, a Maryland corporation, on behalf of its Separate Account J, and its successors and assigns.

“ULLICO Mortgage” shall mean that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” by Declarant, as trustor, to Chicago Title Company, as trustee, for the benefit of ULLICO, dated as of October 30, 2013 and recorded October 30, 2013 under Series No. 2013-J777959 Official Records of San Francisco County.

“Unit” shall mean and refer to the elements of a Condominium which are not owned in common with all Owners or by the Association, the boundaries of which are shown and more particularly described in the Condominium Plan, in deeds conveying Condominiums and in this Declaration, as further described in Section 2.2(a) of this Declaration. Unless otherwise specifically referring to a “Commercial Unit”, Unit shall refer only to Residential Condominium Units in the Residential Parcel.

“Unit Designation” shall mean and refer to the number, letter or combination thereof or other official designation of each of the Units as shown on the Condominium Plan.

## ARTICLE 2

### **DESCRIPTION OF DEVELOPMENT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

**Section 2.1**    **Description of Development.**    The Development consists of the Residential Parcel and all improvements located thereon. As of the date of this Declaration, the Development contains includes one hundred ninety (190) Residential Units and related improvements. Reference is hereby made to the Condominium Plan for further details. The Development is subject to the Reciprocal Easement Agreement, which governs the rights and obligations of the Residential Parcel, Commercial Parcel and Garage Parcel with respect to the Project.

(a)    As of the date of this Declaration, all one hundred ninety (190) Residential Units in the Development are designated as affordable housing units or "below market rate" units. One hundred sixty seven (167) of the Residential Units in the Development are intended to be restricted as affordable housing units for the life of the Development. Twenty three (23) of the Residential Units in the Development, defined herein as "Section 124(f) Units", are intended to be restricted as affordable housing units only for a period of twenty (20) years, and after expiration of the twenty year period, shall be released from all affordability restrictions and related regulations.

(b)    Except as otherwise provided in the applicable regulations of the San Francisco Planning Department, MOHCD or the Section 124(f) Units Letter of Determination, during such time as the Section 124(f) Units are designated as affordable units and until the Section 124(f) Units are released from the affordability requirements and regulations, those units shall be subject to the terms and conditions of the Inclusionary Housing Manual as implemented by MOHCD.

(c)    The other 167 Residential Units that are designated as affordable housing units for the life of the Development shall be subject to the terms and conditions of the Inclusionary Housing Manual as implemented by MOHCD.

**Section 2.2**    **Division of the Development Areas.**    The Development is divided as follows:

(a)    **Units.**    Each of the Units, as separately shown, numbered and designated on the Condominium Plan, consists of the space bounded by and contained within the following boundaries: The upper boundary shall be the unfinished surface of the bottom of the ceiling and the lower boundary shall be the unfinished surface of the top of the floor. The side boundaries of the Residential Units shall be the unfinished interior surfaces of the perimeter concrete walls, corridor walls and glazing, and the centerline of demising walls between Units. Paint, paper, paneling, wall boards, sheet rock, outlets, stain, tile, carpet, hardwood floors and other finishes are considered part of the Unit. The vertical boundaries of any two-story Unit shall be the unfinished surface of the floor of the lower level to the unfinished ceiling of the lower level, the unfinished surface of the upper level floor to the unfinished surface of the ceiling of the upper level, and any opening (e.g. stairway) which connects the two levels. The area between the unfinished surface of the ceiling of the lower level and the unfinished surface of the floor of the upper level (other than that area which is part of the stairway) shall be Common Area, except where areas between floor and ceiling are penetrated by opening (e.g., to accommodate a stairway), the areas shall be deemed to be a part of the Unit. Each Unit includes the portions of the Condominium Building in which the Unit is located so described as well as the airspace so encompassed. The Unit does not include those areas and those things which are herein defined as "Common Area." In addition, each Unit includes any air heating, air conditioning and water heating equipment, water and sewer lines, lighting fixtures, and outlets thereof wherever located, which are part of a discrete and complete system intended to serve only such Unit. A Unit does not include, however, any bearing wall or other structural member necessary to

the support or adequate rigidity of any portion of the Common Area or any other Unit, except that any finished surface of such bearing wall or structural member which faces a Unit shall be a part of such Unit. Each Unit is subject to such encroachments as are contained in the Condominium Building in which the Unit is located whether the same now exists or may be later caused or created in any manner referred to in Section 6.5. In interpreting deeds and plans; the then existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial accordance with the original plans and specifications therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in such deed or plan, regardless of settlement or lateral movement of the Condominium Building in which the Unit is located and regardless of minor variance between the boundaries shown on the plan or deed and those of that Condominium Building. Unless otherwise specified in this Declaration or a Supplementary Declaration, areas within a dropped ceiling that contain utility facilities that serve two or more Units are Common Area and not part of the Unit. An Owner of adjacent Residential Units shall have an easement to connect such adjacent Units, subject, however, to the terms and conditions of Sections 7.10, 7.15 and 7.25 of this Declaration.

(b) **Common Area.** The Common Area shall consist of the entire Development excluding the Units, and may include, without limitation: land; landscaping (including any garden areas); elevators; lobby; trash rooms; bearing walls; decks; yards; courtyards; roof decks; exterior walls; columns; beams; sub-floors; unfinished floors; roofs; foundations; stairways not located within a Unit; hallways which provide access to Units and other Common Areas; life safety equipment (not located within a Unit); those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations lying within the Development or contained within and immediately surrounded by that portion of any structure or space which is defined herein as a part of the Common Area (as required to provide power, light, telephone, cable television, gas, water, sewage, drainage, heat and air conditioning service) except that any air heating, air conditioning and water heating equipment and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be a part of such Unit; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Unit; and any central television antenna.

As described in the Map, the Residential Parcel, Commercial Parcel and Garage Parcel are legal airspace parcels that do not share any Common Area. However, because improvements owned by each Parcel Owner are divided where the parcel lines meet, cooperation is required to maintain, repair and restore such areas. Therefore, under the Reciprocal Easement Agreement, the Commercial Parcel Owner and Garage Parcel Owner have each designated the Residential Parcel Owner to manage such areas and the Parcel Owners shall participate in cost-sharing with respect to certain structural building elements and utility systems which benefit the Parcels. Finally, the Reciprocal Easement Agreement provides mutual easements over each Parcel, as may be indicated on the Map and/or Condominium Plan or described in the Reciprocal Easement Agreement. Reference is made to the Map, Condominium Plan and/or the Reciprocal Easement Agreement for further details.

Each Owner shall have, as appurtenant to that Owner's Unit, a membership in the Association and an undivided interest in the Common Area equivalent to that shown in the Condominium Plan. The ownership of each Condominium shall include both a Unit and an undivided interest in the Common Area as described in this Declaration. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected and of all of the Mortgagees of First Mortgages covering the Units affected as expressed in an amended Declaration; provided that if any such Mortgagee of a First Mortgage does not respond within sixty (60) days of a request by the Association for consent to alter the Common Area, then that Mortgagee's consent shall not be required. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use all Common Area (other than Exclusive Use Common Area which use is governed by Section 2.2(c)) in accordance with the purposes for which such Common Area is intended

and in accordance with all Association Rules, so long as such use does not hinder the exercise of or encroach upon the rights of any other Owners, including another Owner's rights to Exclusive Use Common Area as hereinafter described.

(c) **Exclusive Use Common Area.** Portions of the Common Area shall be referred to as "Exclusive Use Common Area" and are hereby set aside and allocated for the exclusive use of one or more, but fewer than all, Owners, as may be shown and described on the Condominium Plan, this Declaration, or a grant or assignment by Declarant or the Association as an appurtenance to any particular Unit. Reference is made to Section 1.1 of this Declaration for additional detail. Except as provided in Sections 5.1 and 5.2, the repair and maintenance of the Exclusive Use Common Areas shall be the responsibility of the Owner of the Unit to which such Exclusive Use Common Area(s) are appurtenant.

(d) **No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed. Each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Condominium or to the fee title to the Unit.

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

(a) The nonexclusive rights of each Owner for ingress, egress and support in, to and throughout the Common Area, subject to the rights of other Owners in the Common Area and Exclusive Use Common Areas, and subject to the terms of this Declaration and the Association Rules.

(b) The right of the Association's agents or employees to enter any Unit to cure any violation or breach of the Governing Documents, provided that the Association has complied with the notice and hearing requirements of the Governing Documents (except in the case of an emergency), and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

(c) The access rights of the Association to enter into or upon any Unit or Common Area to maintain, repair or replace improvements or property located in the Common Area after forty-eight (48) hours notice to the affected Owner(s) (except in the event of an emergency, in which event no prior notice shall be required).

(d) The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities, telecommunication, internet service and related facilities as described in Article 6 of this Declaration.

(e) The encroachment rights described in Section 6.5 of this Declaration.

(f) The rights of the Declarant during the construction, sales and marketing period described below, and as described in Section 11.4 of this Declaration. Such rights of Declarant shall include, without limitation, the right of Declarant or Declarant Parties and Declarant's Invitees, agents, guests, potential buyers and lessees to enter on any portion of the Development to construct and sell or lease the improvements that Declarant intends to construct on any portion of the Project, 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 unreasonable withheld or delayed.

(g) The rights of Owners to make improvements or alterations authorized by Civil Code Section 4760, subject to Sections 7.10 and 7.25 of this Declaration and other applicable provisions of this Declaration and the Bylaws.

(h) The rights described in the Reciprocal Easement Agreement.

**Section 2.4 Partition Prohibited.** The Common Area shall remain undivided as set forth above. Except as otherwise provided in Civil Code Section 4610, no Owner shall bring any action for partition of a Unit or of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Development and each Owner, by acceptance of a deed to his Condominium, shall be deemed to have waived and abandoned, for himself, his successors and assigns (whether by deed, gift, devise, foreclosure or operation of law), the right to bring or maintain any such action for partition. Judicial partition by sale of a single Condominium owned by two or more Persons and division of the sale proceeds is not prohibited hereby but partition of title to a single Condominium is prohibited.

**Section 2.5 Subdivision Prohibited.** Neither the Association nor any Owner shall subdivide or apply to any appropriate jurisdiction to subdivide the Common Area without the express written consent of all of the Owners and of all the Mortgagees of First Mortgages encumbering any Condominium within the Development and no Owner shall cause or permit the further subdivision of the airspace within such Owner's Unit. This Section 2.5 shall not apply to any subdivision or related activities of Declarant in connection with the completion and build-out of any portion of the Development or the Project.

**Section 2.6 Delegation of Use.** Any Owner may delegate, subject to and in accordance with the Governing Documents, such Owner's right of enjoyment to the Common Area and facilities to the members of such Owner's family, such Owner's tenants, or contract purchasers who reside in such Owner's Unit; provided that no such delegation shall relieve such Owner of its duties and obligations under the Governing Documents.

**Section 2.7 Reservation of Access and Construction Easements.** Declarant hereby reserves to itself, its successors and assigns, nonexclusive easements for ingress and egress and construction activities over the Common Area until such time as the original construction and build out (including, without limitation, tenant improvements in the Commercial Parcel and Garage Parcel) of the Parcels and improvements thereon are completed and sold or leased by Declarant or its successor. The rights retained by Declarant and Declarant Parties over the Common Area shall continue to apply and be effective until such time as Declarant has completed all construction and related activities and sales, leasing and marketing activities, and conveyed or leased all of its interest in the Project, provided that Declarant's rights shall pass to its successors and assigns as provided in this Declaration. The rights retained by Declarant and Declarant Parties include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences, walls or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as staging or storage areas for materials and equipment to be used in connection with the construction of improvements within the Development and Project and to restrict access thereto by means of a fence, wall or otherwise. The rights reserved herein by Declarant connected with construction activities, including marketing, leasing and sales, shall be deemed to include the right to generate the customary noise, vibration, odors, fumes, exhaust, dirt, dust, and light associated with such activities. The rights reserved herein this

paragraph by Declarant connected with construction and development activities, marketing, leasing and sales, shall automatically terminate on the date that is three (3) years after the close of escrow for the sale of the final Residential Unit in the Development by Declarant.

**Section 2.8     Construction Activity.** Each Owner acknowledges that: (i) the construction of the Development and the Project will occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Unit may be disturbed as a result of the noise, odors, dust, fumes, exhaust, dirt, lights, vibrations, and other effects of construction activities; and (iii) the disturbances will continue until the completion of construction of the Development and other improvements on the Project.

Each Owner and/or occupant in the Development is hereby put on notice that the entire Project and related improvements are constructed, marketed, sold or leased, there will be ongoing construction activities in and around the Development and Residential Units and Common Area, and other portions of the Project, and in the vicinity of the Development and adjacent streets and sidewalks. Such activities may cause noise, vibration, odors, dust, dirt, exhaust, fumes, lights, and access to and use of the Common Area and surrounding areas for construction equipment, machinery, vehicles, personnel, staging, and the storage and transportation for construction workers and supplies.

**Section 2.9     Noise Transmissions.** The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Units and Common Areas in the Development, noise from the Garage Parcel and activities therein and related thereto, noise from the Commercial Parcel and Commercial Units and activities therein and related thereto, and noises from outside the Condominium Building and adjacent and nearby properties, including, but not limited to noise from music, televisions, stereo and other audio equipment, foot traffic from other Units, Common Area and other areas of the Project, voices, noise generated by customers, guests and clients of the Commercial Parcel and Commercial Units, noise generated by customers, guests and clients of the Garage Parcel and vehicular activity related thereto, and noises generated by use of the Common Area and other portions of the Project (including, without limitation, the garage, parking areas, lobby areas, elevators, courtyard and amenities), plumbing fixture operations, fans, garage doors, equipment located on the roof, in the garage, and above ceilings of the Condominium Building, doors, trash and recycling disposal, car, truck and bus traffic, delivery trucks, sirens, aircraft noise and other street noises. The Project is a mixed-use project containing different commercial uses and garage uses along with the residential condominiums, and the residential unit owners and occupants in the Development will hear noise from the sources described herein this Section as well as other noises from other sources. Occupants will also hear and experience noise and vibrations in connection with the completion of construction of other portions of the Project, and other portions of the Project and adjacent and nearby properties.

**Section 2.10     Mixed-Use Project.** The Residential Units are part of a larger mixed-use Project which may also include a mixture of commercial, retail, office, parking services, restaurant, cafe and entertainment-type uses, including live music. Such commercial and parking services and related uses will attract customers, clients, guests, vendors, employees, delivery services, garbage and recycling services, and other services to the overall Project, including areas adjacent to the residential units and common areas, the garage and parking areas, the street and sidewalk in front of the Condominium Building, and at the exterior of the Condominium Building. Such commercial uses may also produce noise, vibrations, and odors which may be experienced from the Residential Units and/or other portions of the Development. Such commercial uses may have outdoor seating areas. As the Residential Units are part of a larger mixed-use Project containing commercial uses and parking uses, the Residential Unit Owners shall be subject to such issues and others inherent in such mixed-use Project.

**Section 2.11 Parking in Project.** There is no parking located within the Residential Parcel. Parking in the Project is located within the Garage Parcel, which may be separately owned and operated by the Garage Parcel Owner or a third party parking operator. Parking is not provided with each Unit in the Development. Parking may not be available to Owners and Occupants of Units in the Residential Parcel who desire to park in the Development, or their guests or Invitees. Any parking in the Project shall be subject to availability as determined by the Garage Parcel Owner or operator of the parking garage in the Garage Parcel, and shall be subject to the terms and conditions and parking and related fees imposed by the Garage Parcel Owner or operator of the parking garage in the Garage Parcel. Reference is made to the Reciprocal Easement Agreement for further detail concerning parking in the Project.

**Section 2.12 Bicycle Parking and Storage Area.** The bicycle parking and storage area in the multipurpose room shall be managed and operated by the Association, and use of the area for bicycle parking or storage purposes shall be subject to the Association Rules. The bicycle parking racks and related improvements installed by Declarant in the multipurpose room may be removed at the discretion of the Board, thereby reducing or eliminating bicycle parking in the Development. Any area that is designated for use as a bicycle parking may be changed, altered at the discretion of the Board to reduce or eliminate parking in such area. Any such changes shall be subject to the applicable ordinances and regulations of the City and County of San Francisco.

**Section 2.13 Notice of Special Restrictions.** The Development is subject to the applicable terms and conditions of that certain Notice of Special Restrictions Under the Planning Code recorded on April 16, 2013, as Document No. 2013-J637412, in the Official Records of the City and County of San Francisco, State of California. Said Notice of Special Restrictions imposes certain restrictions and requirements on the Development. Reference is made to said Notice of Special Restrictions for further detail concerning its terms and conditions.

**Section 2.14 Parking by General Public in Garage; Access to Development.** Parking in the Garage Parcel in the Project may be provided to the general public, Users of the Commercial Units, as well as their agents, employees, guests, customers, tenants or other Invitees, by Declarant or the Association. Such users of the parking garage may have access to and use of portions of the Common Areas of the Development, including, without limitation, stairways, corridors, hallways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with such parking.

**Section 2.15 View Impairment.** By accepting a deed to a Unit, each Owner acknowledges that: (a) there are no protected views, and no Owner is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit, (b) any view from the Unit is not intended as part of the value of the Unit and is not guaranteed, (c) any future development, construction or other installation of improvements on the Project or Property, or any adjacent or nearby property may impair the view from any Unit.

**Section 2.16 Second Level Courtyard Door; Level 11 Terrace; Alarm System.** Pursuant to building code requirements and in order to provide egress from the courtyard on the second floor of the building to the ground floor level in the event of an emergency, the door leading from the courtyard on the second level of the building to the stairwell must remain unlocked at all times. As a security feature, an alarm has been installed on this door. The alarm is designed so that it will not sound off if a card key is used to momentarily deactivate the alarm, allowing the door to be open without the alarm sounding. However, this system is not foolproof and Declarant makes no guarantee that the alarm will not sound off due to system malfunction, user error or failure to follow directions for the alarm system. Moreover, the alarm will sound off if the door was opened without a card key or if an unauthorized person opens the door. Unit Owners and Occupants are advised that they will hear the alarm sound off from within their

Unit, which may occur at any time of day or night and may cause a disturbance to such Owner or Occupant. This is especially the case for Units that are located adjacent to the courtyard on the second floor of the building, but will also affect other units in the vicinity of the subject courtyard doors. In addition, Unit Owners should be advised that there is an alarm on the door accessing the roof terrace on the eleventh (11<sup>th</sup>) floor of the Project. Unit Owners will be required to swipe their key card/fob to disable the alarm before opening the door to enter into the roof terrace on the eleventh (11<sup>th</sup>) floor which will produce an alarm sound and may cause a disturbance to those in the immediate area, including adjacent Unit Owners. These alarms are local alarms and not monitored.

**Section 2.17 Roof Area Door; Alarm System.** Pursuant to building code requirements and in order to provide egress from the units and interior of the building to the roof in the event of an emergency, the door leading from stairwells to the roof of the building must remain unlocked at all times. As a security feature, an alarm has been installed at these doors. These alarms should not sound off unless an unauthorized person opens the door. However, this system is not foolproof and Declarant makes no guarantee that the alarm will not sound off due to alarm system malfunction, user error or failure to follow directions for the alarm system. Moreover, the alarm will sound off if an unauthorized person opens the door. Unit Owners and Occupants are advised that they will hear the alarm sound off from within their Unit, which may occur at any time of day or night and may cause a disturbance to such Owner or Occupant. This is especially the case for Units that are located adjacent to the roof areas of the building, but will also affect other units in the vicinity of the roof areas. This alarm is a local alarm and not monitored.

### ARTICLE 3

#### THE ASSOCIATION

**Section 3.1 Incorporation.** The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the deed for the first sale of a Condominium, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

**Section 3.2 Action Through Designated Officers.** Except as to matters requiring the approval of Owners as set forth in the Governing Documents, the affairs of the Association, including the exercise of its powers and duties, and representation of the Residential Parcel pursuant to the Reciprocal Easement Agreement, shall be conducted by the Board, such officers as the Board may elect or appoint or such Persons with delegated authority as set forth in the Governing Documents.

**Section 3.3 Association to Manage the Common Area.** The management of the Common Area shall be vested in the Association in accordance with the Governing Documents. The Owners of all of the Condominiums by accepting title to a Unit hereby covenant and agree that the administration of the Development shall be in accordance with the provisions of the Governing Documents.

**Section 3.4 Membership.** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as that Owner's ownership ceases for reasons set forth herein, at which time that Owner's membership in the Association shall automatically terminate. Each Owner shall have the rights, duties and obligations of membership as set forth in the Governing Documents. Any party that holds an interest in a Condominium merely as security for performance of an obligation shall not be a Member of the Association.

**Section 3.5    Transferred Membership.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale, conveyance, judicial sale or other voluntary or involuntary transfer of the Condominium to which it is appurtenant and then only to the purchaser in the case of a sale or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in its name to the purchaser of its Condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

**Section 3.6    Membership Classes and Voting Rights.** The Association shall initially have three classes of voting Members as follows:

(a)    **Class A:** Class A voting Members shall consist of all Owners with the exception of the Declarant and shall be entitled to one vote or right of consent for each Condominium owned. When more than one Person holds an interest in any Condominium, all such Persons shall be Members; provided, however, the vote or right of consent for any such Condominium shall be exercised in accordance with the Bylaws and as such multiple Owners may among themselves determine, but in no event shall more than one vote be cast or right of consent be exercised with respect to any Condominium. No fractional votes shall be permitted with respect to any Condominium. When more than one Owner owns a Condominium, there shall be a Voting Member for such Condominium, as provided in the Bylaws.

(b)    **Class B:** The Class B voting Member shall consist of the Declarant who shall be entitled to three (3) votes or rights of consent for each Condominium owned. Declarant may designate one or more persons to exercise Declarant's rights as a member of the Association. The Class B voting membership shall cease and be converted to Class A voting membership on the happening of whichever of the following events first occurs:

(i)    When seventy-five percent (75%) of the Condominiums proposed for the Development have been conveyed to Class A Members; or

(ii)   The second (2<sup>nd</sup>) anniversary of the first conveyance of a Residential Condominium to a Class A Member in the Development under the authority of a Final Public Report issued by the BRE.

The use of Class B voting shall be entirely at the discretion of Declarant. If neither of the foregoing events has yet occurred, by written notice to the Board, Declarant may elect to cease the Class B membership and convert the Class B membership to Class A membership.

The provisions of Section this 3.6(b) can be amended only with the consent of Declarant during such time as the Class B membership is in existence.

(c)    **Declarant's Right to Select Director.** In any election of Directors for the Board of Directors after Class B memberships have been terminated, so long as Declarant owns any portion of the Property, the Association shall adopt special procedures to ensure that at least one (1) Director is selected by Declarant. A representative to the Board selected by Declaration pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant. This right of Declarant to select at least one Director to the Board may be exercised by Declarant in Declarant's sole discretion. The provisions of Section this 3.6(c) can be amended only with the consent of Declarant during such time as Declarant owns any portion of the Property.

(d) Other than the provisions contained in Section 11.6, no provision of the Governing Documents which requires the approval of a prescribed majority of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which it owns. Notwithstanding anything to the contrary herein, any action for which the Governing Documents require the approval of a majority (or greater) of Members of the Association other than Declarant shall require the affirmative vote or written consent of a majority of the Class B voting power as well as the affirmative vote or written consent of a majority of the Class A voting power, or, upon the conversion of Class B memberships to Class A memberships, the affirmative vote or written consent of a majority of the total voting power of the Association as well as the affirmative vote or written consent of a majority of the total voting power of Members other than Declarant.

(e) Voting rights of a Class A Member shall vest at the time Assessments are levied against such Owner's Condominium, or as provided in a subsidization plan which may be approved by the BRE, whichever occurs first. Subject to the foregoing in this Section 3.6, matters requiring the approval of the Members may be approved (i) by the requisite votes cast in person or by proxy at a duly-held regular or special meeting of the Members at which a quorum was present, (ii) by written ballots cast in compliance with the requirements of California Corporations Code Section 7513 or any successor statute thereto, or (iii) by unanimous written consent of all the Members. Reference is made to the Bylaws for further detail.

(f) **Personal Liability.** No volunteer officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent, director, member, partner or employee or consultant of Declarant (each a "Management Party"), shall be personally liable to any Owner, or to any other Person, including the Association, for any error or omission of any Management Party if such Person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 5800, any person who suffers bodily injury, including, without limitation, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Development either as a Lessee or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 5800, shall not recover damages from such Board member if such Board member committed the act or omission within the scope of its Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 5800 have been satisfied. California Civil Code Section 5800, as drafted as of the date of recordation of this Declaration, does not apply to common interest developments that are not "exclusively residential." The Project contains some Commercial Units, in the Commercial Parcel. However, the criteria and requirements set forth in California Civil Code Section 5800 are hereby incorporated herein by reference, and shall apply to each Management Party, regardless of the fact that the Project includes Commercial Units in the Commercial Parcel.

(g) Notwithstanding the foregoing provision of this Section 3.6, Declarant shall have no control over the Association's ability to decide whether or not to initiate a construction defect claim under Title 7 (Part 2, Division 2) of the California Civil Code. During the period from the incorporation of the Association and the first election of the Board of Directors, any decision whether or not to initiate a construction defect claim under Title 7 shall be made by vote of a majority of the Members, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members, or may be by written ballot. During the period between the first closing of an escrow for a Unit within the Development and the election of a Board at least two members of which were elected solely by votes of Members other than Declarant, the Board shall take any action concerning construction defect claims under Title 7 (including, if necessary, the allocation of Association funds) as requested by a majority of the Members other than

Declarant pursuant to a vote of the Members, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members, or may be by written ballot. Upon the election of a Board of Directors, which results in there being at least two (2) Directors elected solely by votes of Members other than Declarant ("Non-Declarant Directors"), any decisions made thereafter by the Association about whether or not to initiate a construction defect claim under Title 7 shall be made by the two (2) Non-Declarant Directors, or in the event that there are three (3) or more Non-Declarant Directors serving on the Board, by a majority of the Non-Declarant Directors; provided, that any determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 must be ratified by at least seventy-five percent (75%) of the Members, excluding the vote of Declarant; provided, further, that any such determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 shall be subject to the terms and conditions of Sections 10.3 and 10.4 of this Declaration. The provisions of this section may be amended only with the vote or written consent of at least seventy-five percent (75%) of the Members, excluding the vote of Declarant.

**Section 3.7     General Duties and Powers.** In addition to the duties, powers and limitations enumerated in the Articles and Bylaws of the Association or elsewhere provided for at law or herein, and those enumerated in Section 7140 of the Corporations Code, and without limiting the generality thereof, the Association, through its Board of Directors, shall have the following general powers and duties:

(a) Subject to the provisions of Section 5.1 of this Declaration, manage, control, operate, repair, replace, restore, and maintain in good condition and appearance, all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than that placed by an Owner or tenant upon any Exclusive Use Common Area). The Association shall maintain and repair any portions of the Common Area damaged by the presence of wood destroying pests or organisms, and all property that may be acquired by the Association. In furtherance of its responsibilities under this Section 3.7, and as further described in Sections 5.1 and 5.2 below, the Association may cause any maintenance, repair or replacement of any portion of the Common Area. Relocation of Owners or tenants required in order to repair any areas within the responsibility of the Association shall be subject to the provisions of Civil Code Section 4785.

(b) Acquire, provide and pay for water, sewer, garbage disposal, composting, recycling, electrical, gas and other necessary utility services for the Common Area, and for those Units to which said utilities and services are not separately provided; provided, however, the Association shall have no liability (i) to any Owner arising out of the temporary or permanent failure of any utility, governmental entity or quasi-utility to deliver such services after the Association has contracted for such services, or (ii) to any utility service provider due to nonpayment of a Owner.

(c) Grant easements over, under and through the Common Area and/or any of the Units that are reasonably necessary for the efficient operation of the Development.

(d) Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in protecting the interests of the Association and its Members, as further provided in Article 9 of this Declaration.

(e) Have the authority to employ a manager or other Person(s) and to contract with independent contractors or managing agents to perform all or any part of the duties or responsibilities of the Association except the initiation and execution of disciplinary proceedings against Members in accordance with the procedure set forth in the Bylaws; provided, however, that any contract with a firm or Person appointed as a manager or managing agent shall not exceed a three (3) year term and shall provide for the right of the Association to terminate the same after no longer than one (1) year upon thirty (30) days written notice with cause and upon sixty (60) days written notice without cause, in either case

without payment of a termination fee or other penalty. The Association shall employ professional manager(s) or managing agent(s) consistent with industry best practices, and as is appropriate to maintain the Development in a first-class condition and repair, although the contract with any such manager or managing agent shall be of limited duration as set forth above.

(f) Discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and assess the costs thereof as a monetary penalty against any Owner responsible for the existence of said lien as determined by the Board after notice and a hearing in accordance with the Bylaws.

(g) Enforce this Declaration and adopt reasonable Association Rules not inconsistent with this Declaration concerning use of the Common Area and all improvements and facilities now or hereafter located thereon and the conduct of Owners and their tenants, guests and Invitees with respect to the Development.

(h) Defend, prosecute and settle, as deemed necessary, all lawsuits, arbitrations, mediations and administrative proceedings involving the Association in the Association's own name as the real party in interest and without joining with it the individual Owners in the manner described in Civil Code Section 5980.

(i) Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow, lend money or otherwise use its credit and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property or income, and including contracts, leases and purchase and sale agreements for services, equipment, machinery and other improvements serving the Development or portion thereof.

(j) Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

(k) Fill a vacancy on the Board except for a vacancy created by the removal of a Board member, which shall be filled as provided in the Bylaws. Any election of a Board member shall comply with applicable procedures provided in Civil Code Sections 5100-5130.

(l) Establish and maintain separate, restrictive accounts into which only Annual Assessments, Special Assessments, other Assessments, and reserves shall be deposited. Approval of the Board shall be obtained prior to the expenditure of such reserves.

(m) Subject to the provisions of Article 10 of this Declaration, and subject to the provisions of the Title 7 Master Declaration, institute, defend, settle, or intervene on behalf of the Association, and subject to compliance with Civil Code Sections 5900-5920 and 5925-5965 and the provisions of this Declaration, in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

- (1) enforcement of this Declaration, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law;
- (2) damage to the Common Area;
- (3) damage to Unit(s) which the Association is obligated to maintain or repair; or

(4) damage to Unit(s) which arises out of, or is integrally related to, damage to the Common Area or Units which the Association is obligated to maintain or repair.

(n) In the event that a public nuisance exists or is conducted on any portion of the Common Area, the Association shall take reasonable measures to abate such nuisance.

(o) As further described in the Bylaws, the Association shall adopt rules as required by Civil Code Sections 5100-5130 pertaining to elections, campaigns, voting, proxies and other matters contained therein.

(p) Provide the Owners with all notices, disclosures, reports and statements required by this Declaration and as required by the Davis-Stirling Act, including, without limitation, the following notices:

(1) Annual notices of the Association's operating budget, Assessment and Reserve Funding Disclosure Form, and the Association's foreclosure rights (See Section 4.13);

(2) Annual notices concerning insurance policies maintained by the Association (See Section 9.9(c));

(3) Notices concerning alternative dispute resolution (See Sections 10.1 and 10.2);

(4) Schedule of fines adopted by the Association (Civil Code Section 5850);

(5) Balance sheet and related information as set forth in Section 9.08(d)(2) of the Bylaws;

(6) Statement of any transaction or indemnification described in California Corporations Code Section 8322(d) and (e), and a statement notifying members of their right to have copies of minutes of meetings of the governing body, as set forth in Section 9.08(d)(4) of the Bylaws;

(7) Notice of Architectural Guidelines and Procedures required by Civil Code Section 4765;

(8) Other notices and disclosures required by Civil Code Sections 5300-5320, 5500-5560, 5565, 5570, 5580, 5730, 5810, 4040(b); and

(9) Notices to be provided by the Residential Parcel Owner, as described in the Reciprocal Easement Agreement.

(q) Represent the Residential Parcel and perform the obligations of the Residential Parcel Owner with respect to the Reciprocal Easement Agreement, including, without limitation, overseeing and managing the operation, maintenance, repair and replacement of Joint Benefit Building Elements and Joint Benefit Systems as described in the Reciprocal Easement Agreement, and appointing residential representatives to serve on the Joint Advisory Committee, as such terms are defined in the Reciprocal Easement Agreement. Under the terms and conditions of the Reciprocal Easement Agreement, the Association, which is the successor to the Residential Parcel Owner, has the obligation and responsibility to manage, maintain and restore portions of the Project on behalf of all Parcel Owners and occupants of the Residential Parcel, Commercial Parcel and Garage Parcel. The Residential Parcel Owner is also charged under the Reciprocal Easement Agreement with enforcement of many of the terms

and conditions of the Reciprocal Easement Agreement. Obligations of the Association, as the successor to the Residential Parcel Owner in the Reciprocal Easement Agreement, include, without limitation:

(1) Maintaining, repairing, and replacing, if necessary, the Joint Benefit Building Elements and Joint Benefit Systems.

(2) Compliance with the Project's stormwater control plan, and maintenance of the stormwater control system.

(3) Performing any installations, repairs or alterations to the Joint Benefit Building Elements and Joint Benefit Systems, including providing such personnel as may be required for operation of the same, under any legal or governmental requirement now or hereafter applicable to the Joint Benefit Building Elements and Joint Benefit Systems.

(4) Providing and maintaining the Joint Insurance described in Reciprocal Easement Agreement and any other insurance for the joint benefit of the Parcel Owners. The Association may combine the insurance coverage and any insurance policy or policies described in the Reciprocal Easement Agreement with any insurance policy or policies described in this Declaration.

(5) Establishing, levying and collecting from the Owners Joint Assessments and Special Joint Assessments described in the Reciprocal Easement Agreement. This shall also include preparation of a budget and Joint Expenses Statement for the Joint Expenses described in the Reciprocal Easement Agreement. The Association recognizes that because of the inseparable nature of some expenses (or discount or efficiency in one party purchasing from the same vendor), and because of the role of the Association as manager for the Residential Parcel, Commercial Parcel and Garage Parcel under the Reciprocal Easement Agreement, certain funds may be advanced by the Association for limited programs or expenses which solely benefit the Commercial Parcel Owner and/or Garage Parcel Owner. Recognizing that it is not a joint benefit expense but rather a separate Commercial Parcel Owner and/or Garage Parcel Owner expense paid for by the Association, the Commercial Parcel Owner and/or Garage Parcel Owner shall be required pursuant to the Reciprocal Easement Agreement to reimburse the Association for any funds so advanced on its behalf. For this reason, a budget prepared by the Association could include Commercial Parcel and/or Garage Parcel expenses which are not in the Joint Expense category, labeled as separate, but nevertheless reimbursable to the Association.

(6) Establishing and maintaining reasonable Joint Reserves for reasonably anticipated contingencies and repairs or replacements of Joint Benefit Building Elements and Joint Benefit Systems described in the Reciprocal Easement Agreement.

(7) Enforcing the terms and provisions of the Reciprocal Easement Agreement, as provided therein.

(r) Reference is made to the Reciprocal Easement Agreement for further detail concerning the obligations and responsibilities of the Residential Parcel Owner and its successor, the Association.

(s) Provide to Declarant all notices described in Section 3.7(p) above. In addition to the notices described in Section 3.7(p) above, the Board shall provide Declarant with all other Association notices, reports, summaries, budget pro-formas and statements, assessment notices under Section 4.9, 4.13, expenditure of Reserves notices under Section 4.23, and copies of all other notices required to be given to the Owners by other provisions in this Declaration and in the Bylaws, including, without limitation, notices, agendas, and minutes of all Board and Association Member meetings.

(t) Enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of exclusive or nonexclusive telecommunications, cable or satellite television and/or internet services contract(s) with provider(s) of such services pursuant to which such service provider(s) will serve as the exclusive provider(s) of such services to each Unit in the Development.

(u) Subject to the rights of Declarant, the Association shall have the right to enter into agreements with the Declarant and/or adjacent property owner(s) concerning reciprocal access easements, shared use and maintenance of easement areas on the Development, and shared use and maintenance of the Common Area.

(v) Enter into agreements with the Garage Parcel Owner, adjacent property owner(s), parking garage operators and related service providers in order to provide parking and related services for the Development.

(w) The Association shall have the right and authority to enter into maintenance or subsidy agreements with Declarant.

(x) The Association shall have the right to assess a Special Allocation Assessment against some, but not all, of the Owners and their Condominiums as provided in Section 4.6 of this Declaration.

(y) The Association shall have the power to limit the number of an Owner's Invitees who may use the Common Area facilities and improvements, which right shall include, without limitation, the right to impose disciplinary measures taken after notice and hearing, as provided in this Declaration or the Bylaws.

(z) The Association may charge a reasonable fee to all Unit Owners to cover all of the costs of administering a Unit Owner, or the tenants of a Unit, moving in or out of a Unit, or moving furniture or equipment or other objects into or out of a Unit that requires the use of the elevators in the Project, or parking of any moving truck or vehicle in connection such move, or use of any loading dock areas.

(aa) Subject to Declarant's rights and authority over the Common Area as described in this Declaration, the affirmative vote of at least fifty-one percent (51%) of the Owners shall be required in order for the Board to grant the exclusive use of any portion of the Common Area to any individual Unit Owner in the Development, and such grant shall be otherwise subject to the provisions of Civil Code Section 4600.

(bb) Notwithstanding anything to the contrary in this Declaration or the Bylaws, Declarant shall have the right to serve on the Board in an advisory capacity if desired by Declarant, as further described in Section 5.05 of the Bylaws.

**Section 3.8 Association Rules.** As further described in Section 3.7(g) above, the Association shall have the power to adopt, amend, and repeal the Association Rules as it considers reasonable and appropriate for the Development, subject to the Owners' right to receive prior notice of, and to challenge, the adoption, amendment, or repeal of certain categories of Association Rules as provided in California Civil Code Section 4340-4370. The Association Rules shall govern, without limitation, signs, pets, long and short term leasing of the Residential Units, minimum standards of property maintenance, and the use and enjoyment of the Common Area and all facilities, amenities and improvements located thereon or related thereto, including, without limitation, any common courtyard, roof decks, and Common Area

amenities, by all Owners and tenants, and their respective family members, guests, and Invitees. The Association Rules shall not be inconsistent with nor materially alter any provisions of this Declaration, the Articles, or the Bylaws. In a conflict between a provision of the Association Rules and the provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of such inconsistency. A copy of the Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development as and if required by the Davis-Stirling Act. The Association Rules shall be subject to the Reciprocal Easement Agreement.

Notwithstanding anything to the contrary in this Section 3.8 or in any other provision of this Declaration, any Association Rule that requires Declarant or its successor to obtain any approval or consent from the Association or the Board for any construction, installations, completion or renovation of the Development or any improvements thereon, or any sale or leasing of any Unit in the Development, shall not be effective without the prior written consent of Declarant or its successor.

**Section 3.9     Penalties; Fines; Disciplinary Action.** The Board shall have the power to impose fines, penalties or take disciplinary action against any Owner for failure to pay Assessments (as further described in Article 4 below) or for violation of any provision of the Governing Documents or the Association Rules. Penalties may include but are not limited to fines, suspension of all voting rights and other privileges of Association membership, suspension of right to use Common Area amenities in the Development, or other appropriate discipline, as determined by the Board, provided that the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine, penalty or disciplinary action. The Association shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration and the Association Rules as further described in the Bylaws. All fines, penalties, or disciplinary actions against Owners shall comply with the notice and procedural requirements of this Declaration and Sections 5850-5855 of the California Civil Code.

**Section 3.10     Authority Over Common Area.** The Board or Declarant (as long as Declarant owns one or more Condominiums in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey, or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive or nonexclusive use easements or rights, licenses, lot-line adjustments, rights-of-way, or dedications in, on, over, or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain, or replace lines, cables, wires, conduits, or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant (as long as Declarant owns one or more Condominiums in the Development) does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant (as long as Declarant owns one or more Condominiums in the Development) is in the interest of the Association and its Members and does not unreasonably interfere with access to and use of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such actions and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish such actions, including, but not limited to, grant deeds, easements, licenses, condominium plans, subdivision maps, and lot-line adjustments. The powers and rights of the Board and Declarant described herein this Section 3.10 shall also include the right to amend or modify the Reciprocal Easement Agreement. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and

enjoyment by any Unit Owner of his or her Unit or any Exclusive Use Common Area appurtenant thereto without the prior written consent of that Unit Owner. Declarant's rights described in this Section 3.10 shall terminate on the first to occur of the following: (1) the conveyance by Declarant of the last Unit in the Residential Parcel owned by Declarant, or (2) the date that is two years from the first conveyance of a Unit in the Residential Parcel by Declarant pursuant to a Public Report issued by the BRE.

## ARTICLE 4

### ASSESSMENTS

**Section 4.1** **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Condominium owned within the Development hereby covenants, and each Owner by acceptance of a deed for each Condominium, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: Annual Assessments, Special Assessments, and all other Assessment to be established and collected as hereinafter provided. The Assessments, together with interest, costs and reasonable attorney's fees, shall be charged to a Condominium and shall be a continuing lien upon such Condominium, the lien to become effective upon the recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, costs and a reasonable attorney's fee, shall also be the personal obligation of the Owner of such Condominium at the time such Assessment becomes due. As required by the California Civil Code, before the Association may place a lien upon a Condominium pursuant to this section, to collect an obligation which is past due, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the Assessments owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments owed toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection payments. No Owner may exempt himself or herself from liability for his or her contribution towards the Common Expenses by waiver of the use of enjoyment of the Common Area or by the abandonment of his Unit. All Assessments shall be payable in the amounts specified by the particular Assessment and offsets against such amount shall not be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, repair operation or enforcement. Each Unit Owner shall also have the obligation to pay any Joint Assessments described in the Reciprocal Easement Agreement as pertaining to the Residential Parcel Owner or the Owners of the Units located in the Residential Parcel.

**Section 4.2** **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all of the residents in the entire Development, for the improvement and maintenance of the Common Area and for the common good of the Development. Use of Association funds for election or campaign purposes shall be limited as provided in Civil Code Section 5135. Assessments shall include, without limitation, contributions by the Association toward the Reciprocal Easement Agreement and/or shared use and maintenance agreement to which the Association is a party or is otherwise obligated thereunder. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon the sale or transfer of any Unit, the Owner's interest in the funds shall be deemed automatically transferred to the successor of such Owner.

**Section 4.3** **Annual Assessments.** Each Owner shall pay Assessments based upon the initial Association operating budget submitted by Declarant and accepted by the BRE as a part of Declarant's application for a Public Report. Said budget is based on the estimated operating expenses to be paid

during the initial year by the Association in the performance of its duties (plus a reasonable provision for reserves for maintenance, repair and replacement) and shall be assessed against each Condominium in the Development as provided in Section 4.8 of this Declaration. The operating expense budget for the Association, including reserves, shall be reviewed and analyzed annually by the Board and revised periodically at the discretion of the Board in order to reflect the actual operating expenses and required reserves of the Development. Declarant's obligation to pay for such Annual Assessments for Units owned by Declarant may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association. The Annual Assessments shall include Joint Assessments described in the Reciprocal Easement Agreement.

During each succeeding fiscal year of the Association, the Board may not impose an Annual Assessment that is more than twenty percent (20%) (or any other maximum percentage permitted by law) greater than the Annual Assessment for the Association's preceding fiscal year without the approval of Owners casting a majority of votes at a meeting or election of the Association at which a quorum was present in accordance with Section 4.9, and conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Owners regarding assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to 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). The Board must comply with the provisions of Civil Code Sections 5600-5615 prior to any increase in Annual Assessments.

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

Unless the Association is exempt from Federal and State of California income taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in such other manner authorized by law or regulation of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income to the Association.

**Section 4.4     Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the Common Expenses of the Association for such fiscal year (including, but not limited to, unanticipated delinquencies, costs of construction and unexpected repairs, replacement or reconstruction of capital improvements in or on the Common Area including fixtures and personal property related thereto). The aggregate of Special Assessments during any fiscal year shall not exceed five percent (5%) of the budgeted gross expenditures of the Association for that fiscal year without an approval of Owners casting a majority of the votes at a meeting or election of the Association at which a quorum was present and in accordance with Section 4.9 conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Owners regarding

assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to 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). The Board may not levy a Special Assessment without complying with the provisions of Section 5605-5615 of the Civil Code. The Special Assessments may include Special Joint Assessments described in the Reciprocal Easement Agreement.

Unless exempt from Federal and State of California income taxes, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied, or otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, to the extent possible, its taxation as income to the Association.

**Section 4.5     Individual Special Assessment.** The Association shall have the authority to levy an Individual Special Assessment, pursuant to the procedures contained in the Governing Documents, against any Condominium or any Owner in order to (i) impose fines, penalties or take disciplinary action against any Owner for violation of any provision of the Governing Documents, (ii) obtain reimbursement of funds expended by the Association, including, without limitation, any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Condominium or their family members, guests, agents, Invitees or pets in violation of the Governing Documents, or (iii) to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit and/or occupant into compliance with the provisions of this Declaration and the Governing Documents. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association; provided that payment of the deductible amount of any such insurance policy shall be the responsibility of the Owner. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association shall promptly refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association shall have the authority to enforce the delinquent assessment as described in Sections 4.15 through 4.17 of this Declaration, subject only to the directly applicable limitations required by Civil Code Section 5725. The Association shall have the authority to adopt a reasonable schedule of Individual Special Assessments for any violation of the Governing Documents. If after notice and hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose such additional assessment each time the violation is repeated and enforce such assessment as provided herein. A hearing committee may be established by the Board to administer the foregoing.

**Section 4.6     Special Allocation Assessment.** The Association may establish a special allocation assessment ("Special Allocation Assessment") for reconstruction, capital improvements, extraordinary maintenance or repair, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all Owners. Such Special Allocation Assessment may be imposed only with the consent of a majority of the Owners benefitted by the Special Allocation

Assessment. Special Allocation Assessments shall be divided among and charged to those Owners which derive benefit therefrom in the same manner as Special Assessments. Special Allocation Assessments shall be due and payable by all such Owners in such installments and during such period or periods as the Board determines. Each Special Allocation Assessment shall be segregated in the Association funds solely to the Units which derive benefit therefrom. In the event the Association obtains income directly related to an item which has been assessed as a Special Allocation Assessment, such income shall be allocated so as to reduce or offset such Special Allocation Assessment.

**Section 4.7     Notice and Quorum for Adoption of Annual or Special Assessment.** Any action authorized to be taken by the Members under Sections 4.3 and 4.5, shall be taken at a meeting called for that purpose, written notice of which shall be mailed by first class mail, postage prepaid to each Member at the address of each Unit owned by such Member within the Development not less than ten (10) days nor more than ninety (90) days prior to the meeting. For purposes of Sections 4.3 and 4.5 only, quorum means more than fifty percent (50%) of the Owners of the Association. The proposed action may also be taken without a meeting pursuant to the provisions of Corporations Code Section 7513. Any voting of the Owners regarding assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Sections 5100-5130.

The Association shall provide notice to the Owners of the separate interests of any increase in the Annual Assessment or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. Such notice shall be provided either personally or by first-mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable.

**Section 4.8     Division of Assessments.** All Annual and Special Assessments shall be divided among, allocated and assessed to the Unit Owners as follows:

(a) Annual and Special Assessments shall include the following: Common Expenses and Joint Expenses. Each Unit Owner shall pay an Annual Assessment equal to its share of Common Expenses and Joint Expenses. Joint Expenses are a component of and included within the Common Expenses. Special Assessments shall be divided and charged to the Unit Owners in the same manner.

(b) "Common Expenses" are those expenses relating to all Residential Units and Common Area in the Development. Common Expenses also include Joint Expenses related to the Project generally. Common Expenses shall be allocated and assessed to each Unit Owner as set forth below and as more specifically itemized in the Association Budget. The Common Expenses fall within the following general categories: operating expenses for administrative, general maintenance, custodial service, landscaping, security & fire safety systems, and utilities; and reserves for replacement/repair of major components of the Common Area and Association assets for which the Association is responsible pursuant to this Declaration or the Reciprocal Easement Agreement. Reference is made to the Association Budget for further detail regarding the particular expenses in each category. All Common Expenses shall be divided equally among the Unit Owners, except for those variable Common Expenses that will be prorated as described below. Those variable Common Expenses for items that are reasonably expected to provide certain Unit Owners with benefits at least ten percent (10%) greater than other Unit Owners with different sizes of Units shall be prorated according to the percentage for each Residential Unit set forth in the Association Budget, which percentage is based on the ratio of the square footage of the floor area of each Residential Unit to the total square footage of the floor area of all Residential Units. Such percentage to be used for proration of the variable Common Expenses for each Residential Unit is set forth on Exhibit B to this Declaration. Those variable Common Expenses that shall be prorated as described above shall be operating expenses and reserves for (i) administrative (Association insurance), (ii) custodial service (window washing), (iii) utilities (natural gas, water and sewer) and refuse collection, (iv) building exteriors (inspection, maintenance repair and replacement of: caulking [panels & glazing],

exteriors doors, glazing repair, masonry siding [paint & repair], metal panel repair, (v) mechanical systems-HVAC (inspection, maintenance, repair and replacement of: exhaust fans, supply fans, fan coils, heat pumps), (vi) mechanical systems-water (inspection, maintenance repair and replacement of: booster pumps, circulation pumps, ejector pumps, water heaters, backflow devices), (vii) mechanical systems-trash (inspection, maintenance repair and replacement of: trash chutes, trash chute doors, trash compactor repair, trash bins), (viii) roofing system (inspection, maintenance repair and replacement of: built up roofing, roof drainage, metal, roof inspection and repair services), and (ix) window washing (inspection, maintenance repair and replacement of: swing stage, cables, system controls, tie backs). Reference is made to the Association budget for further detail regarding the prorated Common Expenses.

(c) "Joint Expenses" are those expenses relating to the Residential Parcel, Commercial Parcel and Garage Parcel and Joint Benefit Building Elements and Joint Benefit Systems benefiting the Residential Parcel, Commercial Parcel and Garage Parcel, as further described in the Reciprocal Easement Agreement and in this Declaration, and as more specifically itemized in the Association Budget. Joint Expenses are those portions of the Common Expenses (described in Section 4.8(b) above) that are to be shared with and paid by the Residential Unit Owners, Commercial Parcel Owner and Garage Parcel Owner. The Commercial Parcel Owner and Garage Parcel Owner shall each shall pay to the Association a portion of the Joint Expenses, as further described in the Reciprocal Easement Agreement. The Commercial Parcel Owner's and Garage Parcel Owner's respective percentage shares of the Joint Expenses to be paid to the Association shall be based on the ratio of the relative square footage of the floor area of the three Parcels, as further described in the Reciprocal Easement Agreement. The Joint Expenses fall within the following general categories: administrative, general maintenance, custodial, security & fire safety, and utilities. Joint Expenses include both operating costs and reserves for the aforementioned categories of expenses. Reference is made to the Association Budget for further detail regarding the Joint Expenses. It is recognized that because of the inseparable nature of some expenses (or discount or efficiency in one party purchasing from the same vendor), and because of the role of the Association as manager for the Residential Parcel, Commercial Parcel and Garage Parcel under the Reciprocal Easement Agreement, certain funds may be advanced by the Association for limited programs or expenses which solely benefit the Commercial Parcel Owner and/or the Garage Parcel. Recognizing that it is not a Joint Benefit Expense but rather a separate Commercial Parcel Owner and/or Garage Parcel Owner expense paid for by the Association, the Commercial Parcel Owner and/or Garage Parcel Owner shall be required to reimburse the Association for any funds so advanced on its behalf. For this reason, a budget prepared by the Association could include Commercial Parcel and/or Garage Parcel expenses which are not in the Joint Expense category, labeled as separate expense for the Commercial Parcel Owner and/or Garage Parcel Owner, but nevertheless reimbursable to the Association.

(d) The initial Association Budget submitted by Declarant and accepted by the BRE as described above shall be binding for one (1) year after the sale of the first Unit by Declarant. After the first year, the Association Budget, including reserves, shall be reviewed annually by the Board and revised at the discretion of the Board in order to reflect the actual operating expenses and required reserves of the Development. Any revisions to the Association Budget by the Board shall take into account all of the expenses described in this Section 4.8 above, and expenses described in both this Declaration and the Reciprocal Easement Agreement.

(e) Annual Assessments shall be charged to and collected from each Unit Owner on a monthly basis at the rate of one-twelfth (1/12) of the Annual Assessment charged with respect to each Unit.

(f) Special Assessments, other than an Individual Special Assessments, shall be divided and assessed to the Unit Owners in a manner that is consistent with the allocation of assessments

described in this Section 4.8 above with respect to the type of expense the Special Assessment is intended to cover. Special Assessments shall be charged to and collected from the Unit Owners in either one (1) single payment, or in monthly payments, as determined by the Board.

(g) Annual Assessments and Special Assessments shall include assessments for which the Residential Parcel and Unit Owners are responsible under the Reciprocal Easement Agreement.

**Section 4.9 Date of Commencement of Annual Assessment.** The Annual Assessment provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the conveyance of the first Unit from Declarant to a Unit Owner; provided, however, in the event the first Annual Assessment commences on a date other than the beginning of a fiscal year of the Association, only such portion of the first Annual Assessment as would ordinarily be collected at the monthly rate during the remaining months of such partial fiscal year shall be due and collectible from the Unit Owners.

**Section 4.10 Failure to Establish Annual Assessment.** Subject to the provisions of Section 4.3 hereof, the Board shall determine and fix the amount of the Annual Assessment charged against each Unit at least thirty (30) days in advance of each fiscal year of the Association. In the event that the Board fails or refuses to establish an Annual Assessment as required by this Section, the Annual Assessment for the immediately preceding fiscal year shall be the Annual Assessment for the fiscal year as to which no Annual Assessment has been established unless an increase or decrease therein is approved by a majority of each class of Members or, in the event Class B shares have been converted to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

**Section 4.11 Annual Notice of Assessments and Foreclosure Rights.** The Association shall distribute a copy of the pro forma operating budget (or a summary, as provided for in Civil Code Section 5320(a)(2)) within thirty (30) days to ninety (90) days before the end of the Association's fiscal year, as required by Civil Code Section 5300, and as further set forth in the Bylaws. The pro forma operating budget (or summary thereof) shall at a minimum include: (i) all of the information and statements required by Civil Code Section 5300(b) (including, without limitation, all of the information concerning the Association's reserves), and (ii) the disclosures required by Civil Code Sections 5570 and 5300(e) (Assessment and Reserve Funding Disclosure Summary Form). In addition, the written notice described in Sections 5730 and 5310(a)(6) of the Civil Code (notice regarding foreclosure rights of the Association) shall be provided to each member of the Association within thirty (30) days to ninety (90) days before the end of the Association's fiscal year. This notice shall be printed in at least 12-point type.

**Section 4.12 Certificate as to Payment.** The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Condominium have been paid. Such certificate shall be deemed to be conclusive evidence of the payment of such Assessments to the extent stated therein to have been previously paid.

**Section 4.13 Delinquency of Assessment; Right to Lien.** All Annual and Special Assessments, or monthly installments thereof, levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. For each delinquent Assessment, or monthly installment thereof, the Association may recover: (i) reasonable costs incurred in collecting the delinquent Assessment, or part thereof, including reasonable attorney's fees, (ii) a late charge not to exceed ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00), whichever is greater, and (iii) interest on all sums imposed herein, including the delinquent Assessment, reasonable costs of collection and late charges at ten percent (10%) per annum commencing thirty (30) days after the Assessment becomes due. The Association shall

have the right to record a lien against the delinquent Owner and enforce such lien and foreclose upon Owner's interest in the Unit in accordance with the procedures described in Civil Code Sections 5650-5740 and 4040, as further described in Sections 4.14 and 4.15 of this Declaration. The Association's right shall be subject to the limitations imposed by Civil Code Sections 5705-5720 with respect to delinquent assessments that are less than One Thousand Eight Hundred Dollars (\$1,800).

**Section 4.14 Transfer of Condominium by Sale or Foreclosure; Rights of First Mortgagees.** Sale or transfer of any Condominium shall not affect the Assessment lien. However, the foreclosure of a First Mortgage, or the sale of any Unit pursuant to foreclosure of a First Mortgage, shall extinguish the Assessment lien of any Assessments on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). No sale or transfer shall relieve such Condominium from Assessments thereafter becoming due or from the lien thereof. Where the Mortgagee of a First Mortgage or other buyer of a Condominium obtains title to such Condominium as a result of Foreclosure, such acquirer of title, and its successors and assigns, shall not be liable for Assessments or other charges of the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquirer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage), except for a share of such Assessments or other charges resulting from a reallocation of Assessments which are made against all Condominiums. The unpaid share of such Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Condominium Owners including such acquirer, or its successors or assigns. If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Condominium to be transferred and the Condominium shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

**Section 4.15 Procedure for Perfection of Lien of Assessment.** In the event any Assessment or monthly installment of an Annual Assessment is not paid within fifteen (15) days after the day upon which it becomes due, the Board may deliver a "Notice of Delinquent Assessment" to the Unit Owner of the Unit assessed and may cause a copy of said Notice to be recorded in the Official Records of the City and County of San Francisco. Prior to recording the Notice of Delinquent Assessment, the Association shall provide the Unit Owner with thirty (30) days prior written notice in accordance with the provisions of Civil Code Sections 5650-5740 and 4040, and shall offer to the Unit Owner and, if so requested by the Unit Owner, shall participate in "meet and confer" procedures pursuant to Civil Code Section 5900-5920 and any applicable successor statutes. Said Notice of Delinquent Assessment shall state the amount of the Assessment then due and unpaid which shall include interest, costs and reasonable attorneys fees, a legal description of the Unit against which such Assessment has been levied, the name of the record Unit Owner of such Unit and the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure (if the Association so elects). Such Notice of Delinquent Assessment shall be signed by a representative designated by the Board, and mailed in the manner set forth in Section 2924(b) of the Civil Code, to all record Unit Owners of the Unit assessed, no later than ten (10) calendar days after recordation. When such a Notice of Delinquent Assessment has been recorded, the Assessment described therein shall constitute a lien upon the Unit identified therein which lien shall be prior in right to all other liens thereafter arising except for all taxes, assessments or other levies which by law would be prior thereto and except for the lien of any Mortgage recorded prior to the date any such Assessment became due. Such Assessment lien shall be in favor of the Association and shall be for the benefit of all Unit Owners. If the delinquent Assessment or installment and related charges are paid or otherwise

satisfied, the Association shall send to the Unit Owner a "Notice of Satisfaction and Release of Lien" and shall record same in the Official Records of the City and County of San Francisco.

**Section 4.16 Enforcement of Lien of Assessment.** After the expiration of thirty (30) days following the recording of the lien of any Assessment established pursuant to Section 4.15, and subject to the requirements of Civil Code Sections 5650-5740 and 4040, and other applicable requirements, the Board may enforce the lien by filing an action for judicial foreclosure or, if the Notice of Delinquent Assessment contains the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a "Notice of Default" in the form described in Civil Code Section 2924c(b)(1) to commence nonjudicial foreclosure. Such nonjudicial foreclosure is to be conducted in accordance with the requirements of Sections 2924-2924h of the California Civil Code applicable to the exercise of nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at a foreclosure or trustee's sale and to acquire, hold, mortgage and convey the same. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien and, upon receipt of a written request by the Unit Owner, a "Notice of Rescission of the Declaration of Default and Demand for Sale."

(a) **Right of Redemption.** Pursuant to California Civil Code Section 5715(b), a nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale under this paragraph ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of a Unit in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in Civil Code Section 5715.

The provisions in Section 4.15 through 4.18 above are intended to comply with the requirements of Civil Code Sections 5650-5740 and 4040 in effect as of the date of this Declaration. If said Civil Code sections are amended or rescinded in any manner the provisions of Sections 4.15 through 4.18 above shall automatically be amended or rescinded in the same manner. The Board should confirm and comply with the current statutory requirements under these Civil Code Sections before initiating any Assessment lien or foreclosure procedures.

**Section 4.17 Enforcement of Assessment by Suit.** The Association may, in its own name, commence and maintain a suit at law against any Owner or Owners personally obligated to pay Assessments for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquent Assessments, together with processing fees, interest thereon, costs of collection, court costs and reasonable attorney's fees in such amount as the court may determine with respect to such delinquent Owner. Suit to recover judgment for unpaid Assessments shall be maintained without foreclosing or waiving any lien for such Assessments created pursuant to this Declaration. In any action instituted by the Association to collect delinquent Assessments, accompanying late charges and/or interest, the prevailing party shall be entitled to recover costs and reasonable attorney's fees.

**Section 4.18 Suspension for Non-Payment of Assessment.** The Board may suspend the voting rights and right to use the Common Area (including, without limitation, the right to use amenities or facilities in the Common Area) of a Member (including, an Owner or Occupant of a Unit, and their Invitees) who is in default in the payment of any Assessment or in violation of any Association Rule, after

notice to such Member and an opportunity for a hearing before the Board which satisfies the minimum requirements of Section 7341 of the Corporations Code and as provided in the Bylaws.

**Section 4.19    Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or any portion thereof, the personal property of the Association or the Development as a whole, rather than against the Condominiums, said taxes shall be included in the Assessments made under the provisions of Section 4.1, and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to said taxes to be paid in two installments, each thirty (30) days prior to the due date of the respective tax installment.

Each Owner is obligated to pay any taxes or assessments assessed by the County Assessor against the Owner's Condominium and personal property. Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against any Condominium as a result of the transfer of title from Declarant to the first purchaser), the non-segregated tax amount shall be allocated among all the Condominiums in accordance with an allocation method as may be selected by Declarant or by the Board. Unless paid directly by the Owner, each Owner shall pay the Owner's allocable share to the Association in a timely and proper manner so that the Association may make the non-segregated tax payment in a timely and proper manner. The Association may levy a Special Assessment against the Condominiums to collect the non-segregated tax amount and/or otherwise charge each Owner for its allocable share of such non-segregated tax amounts. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interest, fees or other such costs incurred as a result of the breach and the Association may levy an Individual Special Assessment against the Owner's Condominium to collect the amount, including any penalties, interest, fees or other costs.

**Section 4.20    Review of Accounts, Revenues and Expenses.** As provided in Civil Code Section 5500, the Board shall, on at least a quarterly basis:

- (a) Review a current reconciliation of the Association's operating accounts.
- (b) Review a current reconciliation of the Association's reserve accounts.
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- (d) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.
- (e) Review an income and expense statement for the Association's operating and reserve accounts.

For purposes of this Section 4.20, "review" shall include preparing reasonable documentation of such review.

**Section 4.21 Expenditure of Reserve Funds.** In accordance with Sections 5510-5520 of the Civil Code, the Board shall not expend funds designated as reserve funds for any purpose other than: (i) the repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established, or (ii) litigation involving the purposes set forth in (i) above. Notwithstanding the provisions of (i) and (ii) above, the Board:

(a) May authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

(b) Shall cause the transferred funds to be restored to the reserve account within one year of the date of the initial transfer; except that the Board may, after giving the same notice required for considering a transfer, and upon, making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Development, temporarily delay the restoration.

(c) Shall exercise prudent fiscal management in maintaining the integrity of the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (b) above. The Board may, at its discretion, extend the date the payment on the Special Assessment is due; however, any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment. Any such Special Assessments shall be subject to the limitations specified in Section 4.5.

(d) Subject to the provisions of Article 10 below, when the decision is made to use reserve funds or to temporarily transfer funds from the reserve account to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of such expenses on at least a quarterly basis, and such accounting shall be made available for inspection by Members at the Association's office.

(e) The signatures of at least two (2) persons, who shall be members of the Board, or one officer who is not a member of the Board and one member of the Board, shall be required for the withdrawal of moneys from the reserve account.

**Section 4.22 Reserve Studies.** At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obliged to repair, replace, restore or maintain, as part of a study of the reserve account requirements, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year, which excludes the Association's reserve account for that period. In addition, the Board shall annually review, or cause to be reviewed, the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review. The reserve account study shall at a minimum include the items and components set forth in Civil Code Sections 5550-5570.

## ARTICLE 5

### MAINTENANCE, REPAIR AND IMPROVEMENT

**Section 5.1 Association's Rights and Obligations to Inspect, Maintain and Repair the Development.** Coincident with the first conveyance of a Unit by Declarant, the Association shall repair, restore, replace and maintain in good condition and appearance all of the Common Area and all facilities, improvements, furnishings, equipment, utilities, water systems, sewers, any and all drains or drainage systems not maintained by a public entity, utility company or improvement district, roadways, walkways and related street, sidewalk and pedestrian lighting not maintained by a public entity, utility company or improvement district, landscaping and related improvements and facilities thereon, and all property that may be acquired by the Association, including, without limitation, foundations, siding, trim, roofs, exterior finishes on exterior doors to units (other than the hardware thereon), elevators, life safety equipment and facilities, exterior building staircases, trash, recycling and compost collection areas and related improvements, courtyards and walkways and related improvements. The Association's responsibility for maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any homeowners association handbook, or any applicable maintenance manual or manufacturers manual. Without limitation of the foregoing, the Association shall perform at least the minimum cleaning, maintenance and repair obligations required of the Association on Exhibit C attached hereto, and by this reference made a part hereof. The Association's responsibility for maintenance, repair and restoration shall also include any such responsibilities of the Association described in the Reciprocal Easement Agreement.

(a) In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Units and Common Area, the Association shall periodically inspect the exterior of the Condominium Building and the Common Area improvements to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(b) In furtherance of the Association's obligations described in this Section 5.1, the Board shall have the obligation to regularly and actively inspect, or cause to be inspected by a qualified professional, the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon to determine the need for repairs, replacements, restorations and maintenance in order to keep the Common Area and all facilities, improvements, furnishings, equipment, landscaping in good repair, working order, condition and appearance. The Board shall keep a written record and documentation of the results of such inspections. For the period of ten (10) years immediately following substantial completion of the Development, the Board shall provide to Declarant a summary of the inspection(s). In the event the Board does not perform such inspections, Declarant may, after thirty (30) days prior notice to the Association, cause such inspection(s) on the Board's behalf. The Board shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to be performed by a qualified professional in a timely manner. In furtherance of the foregoing, the Association may inspect, or cause to be inspected by a qualified professional, any exclusive use deck or patio appurtenant to an Owner's Unit to determine whether maintenance or repairs may be required.

(c) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act, omission or neglect of an Owner or that Owner's guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his or her guests, co-inhabitants, Occupants, tenants or Invitees, except that if a repair or replacement is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs or replacements, and the responsible Owner shall pay any deductible (or portion thereof, as determined by the Board) pursuant to the insurance policy and the Association may impose an Individual Special Assessment on the responsible Owner in the amount of such deductible, as well as other costs related thereto, as further described in Section 4.6. If the responsible Owner fails to pay such deductible (or portion thereof, as determined by the Board), the Association may make such payment and shall charge the responsible Owner for all costs and fees associated with or arising from such nonpayment, which charge shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate permitted by law) until paid in full. Any inspections, repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, co-inhabitants, tenants or Invitees, or the pets of an Owner or his guests, tenants or Invitees the cost of which is not covered by insurance carried by the Association shall be made by the responsible Owner; provided that the Association approves the person actually making the repairs, which person shall be a qualified professional, and the method of repair and any such repair shall comply with the rules and regulations of the Architectural Control Committee as approved by the Board and shall comply with the Reciprocal Easement Agreement. The Association shall be entitled to charge the costs of inspection, maintenance, repair and replacements to the Common Areas arising out of or caused by the willful or negligent act, omission or neglect of an Owner or his guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his guests, Occupants, tenants or Invitees, to the responsible Unit Owner.

(d) If an Owner fails to make any repairs or replacements for which that Owner is responsible as provided herein this Article 5, then, upon a vote of a majority of the Board and after notice to the Owner and an opportunity for a hearing before the Board, the Association shall have the right, but not the obligation, to perform such maintenance, repairs or replacements and, if necessary in connection therewith, to enter that Owner's Unit, as further described in Section 5.2 below. The cost of such repairs or replacements shall be paid to the Association by said responsible Unit Owner, as further described in Section 5.2 below.

**Section 5.2 Owner's Right and Obligation to Inspect, Maintain and Repair.** Except for those portions of the Development which the Association is required to maintain and repair, each Owner shall, at that Owner's sole cost and expense, maintain and repair that Owner's Unit, keeping the same in good condition and repair. Each Owner's responsibility for maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any applicable homeowners manual, maintenance manual or manufacturers manual provided to the Owner by Declarant or its agents or the Association or property manager. Each Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, that Owner's Unit and any Exclusive Use Common Area deck or patio area appurtenant thereto in order to maintain the Unit and such Exclusive Use Common Area in good repair, condition and appearance. Each Owner shall take no action that causes degradation, damage or puncturing to any flooring, wall or surface area of any deck or patio area appurtenant to that Owner's Unit, and each owner shall be responsible for any such degradation, damage or puncturing caused by such Owner's action. Each Owner shall notify the Association promptly and without delay in the event such Owner discovers and damage, crack, leak, hole, degradation or other problem with the functioning of any window, flooring, wall, surface area or other portion of a deck or patio area appurtenant to that Owner's Unit. Each Owner shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to that Owner's Unit and any Exclusive Use Common Area appurtenant thereto be performed by a qualified professional in a timely manner. In addition, each Owner shall perform, without limitation, at least the minimum cleaning, maintenance and

repair described on Exhibit C attached hereto. Each Unit Owner's responsibility for maintenance, repair and restoration shall also include any such responsibilities of such Unit Owners described in the Reciprocal Easement Agreement.

(a) Each Owner shall be responsible for and bear the cost of inspection, maintenance, repair, replacement, removal and disposal of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke and carbon monoxide detectors, and any and all other appliances and kitchen devices of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit, including condensers and compressors (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, light bulbs; electrical panels and breakers, electrical wiring and other fixtures of any nature whatsoever; "built-in" features; and decorative features, fireplaces, any furniture and furnishings; plumbing pipes, sanitary sewer Lines, drains, flues, heating ducts, telephone lines or equipment, toilets, bidets, shower enclosures and tubs, cable, phone and data lines, television Lines or equipment or other utility equipment which serve only that Owner's Unit, no matter where the equipment is located; provided, that any such equipment located in the Common Area shall be maintained and repaired by the Association, or a licensed contractor approved by the Association, and such maintenance, repair and/or replacement costs shall be paid by the Owner of the Unit. In furtherance of the foregoing, each Owner shall bear the cost of any clearing of blockage and damage repair to any toilet or lateral sanitary sewer line which serves only that Owner's Unit. If the Owner fails to pay the cost for such maintenance or repairs, the Association may levy an Individual Special Assessment against the Owner's Condominium to reimburse the Association for costs incurred. If the utility equipment or Lines serve two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment or Lines, a portion of which exclusively benefits one Unit and a portion of which benefits two or more Units, the Board shall allocate the cost between the Unit Owner and the Association in a fair and equitable manner.

(b) Each Owner shall maintain, repair and replace any smoke or carbon monoxide detectors located in that Owner's Unit. The Association shall maintain any fire sprinkler heads and related systems located in any Unit, provided that each Owner shall immediately notify the Association of any problems with any automatic sprinkler heads located the Owner's Unit.

(c) Subject to the Association Rules and any architectural or other guidelines adopted by the Board, each Owner shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to that Owner's Unit and any Exclusive Use Common Area appurtenant thereto. All maintenance and repair shall be performed by qualified professionals.

(d) Subject to the Association Rules and Section 7.25 below, each Owner shall have the exclusive right to paint, plaster, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors and doors bounding that Owner's Unit in a manner which does not intrude on or into the Common Area, which does not involve mechanical or structural elements of the Common Area, which does not transmit unreasonable noise or vibration through the Common Area (including without limitation, floors, ceilings and walls), as reasonably determined by the Board and which is not visually offensive to persons of ordinary sensibilities viewing from the Common Area or public areas as reasonably determined by the Board. Any modification of flooring within a Unit shall be subject to Section 7.25 below. In the event an Owner fails to maintain the interior of his Unit or fails to perform routine cleaning and maintenance of any Exclusive Use Common Area to which he has an easement or assignment in a manner which the Board deems necessary or appropriate to preserve the appearance and value of the Development, the Board may notify the Owner of the work required and request that the Owner complete such work within sixty (60) days from the date such notice was given to the Owner. In

the event said Owner fails to complete such work within said period, the Board may, after written notice to the Owner and an opportunity for a hearing before the Board, cause such work to be done and the cost of such work shall be a monetary penalty enforceable according to the provisions of the Bylaws and this Declaration and shall be payable to the Association by such Owner.

**Section 5.3     Maintenance of Landscaping; Use of Utilities.**

(a) The Association shall maintain all of the landscaping within the Common Area and Development (other than landscaping located in Exclusive Use Common Area appurtenant to an Owner's Unit, which shall be the responsibility of such Unit Owner), as originally installed in general accordance with the landscaping plans reviewed and approved by the City unless climatic conditions make such maintenance impracticable or unless each the City and the Board consents to a change in the plan for the landscaping. Such landscaping maintenance responsibilities of the Association include, without limitation, all landscaping within the Common Area and Development, landscaping areas open to the general public, and landscaping adjacent to roadways, sidewalks or walkways serving the Development.

**Section 5.4     Access at Reasonable Hours.** For the purpose of performing the inspection, maintenance, repair and/or replacement authorized by this Article 5, the Association's agent(s), employee(s) or hired service providers shall have the right, after reasonable written notice to the Owner (received by Owner pursuant to Section 11.13 not less than forty-eight (48) hours prior to entry, unless an emergency exists, in which case no written notice need be given), to enter any Unit during reasonable hours with as little inconvenience to the Owner as is practicable.

**ARTICLE 6**

**UTILITIES AND EASEMENTS**

**Section 6.1     Unit Owners' Rights and Duties.** The rights and duties of the Unit Owners with respect to sanitary sewer, water, cable or satellite television, electricity, gas, internet and telephone Lines and facilities and heating and air-conditioning facilities shall be as follows:

(a) Whenever sanitary sewer, water, cable or satellite television, telephone, internet, electricity, gas, heating or air-conditioning conduits, ducts or flues are installed within the Development, which connections, or any portion thereof, lie in or about or adjacent to Units owned by a Person other than the Owner of a Unit served by said connections, the Association shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the appropriate utility companies or service providers enter the Units after reasonable notice and during reasonable hours (except, in the event of an emergency in which case entry may occur at anytime without notice), in or about which said connections, or any portion thereof, lie to repair, replace and generally operate, monitor and maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, cable television, internet, telephone, electricity, gas, heating or air-conditioning conduits, ducts or flues are installed within the Development which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to full use and enjoyment of such portions of said connections as service his Unit. The occupants of a Unit shall not take any action that would in any manner interfere with the operation of the utility lines or equipment serving any other Unit.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of the above-described connections, or with respect to the sharing of the cost thereof, then, upon request of one of such Owners addressed to the Association, the matter shall be submitted to the Board who shall hold a hearing and decide the dispute and the decision of the Board shall be final and conclusive upon the parties.

(d) Any air heating, air conditioning, water heating equipment, lighting fixtures and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be maintained by the Unit Owner of the Unit served by said equipment.

**Section 6.2 Association's Duties.** The Association shall maintain all utility connections, water systems, sanitary sewers, cable or satellite television, internet, telephone, drainage and storm drainage facilities located in the Common Area, except for those installations maintained by utility companies whether public, private or municipal, or other service provider. All drainage, sanitary sewer and storm drainage facilities shall be regularly inspected and, if necessary, cleaned or otherwise maintained. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Condominiums; provided that such charges shall be allocated to the Owners as provided in Article 4. The Association shall maintain all walkways and related street, sidewalk and pedestrian lighting and landscaping located in the Common Area, except those maintained by public entity or government agency. Reference is made to Section 5.1 of this Declaration for further detail concerning Association maintenance obligations.

**Section 6.3 Easements for Utilities and Maintenance.** Easements over, across and under the Development for (a) the installation, operation, repair and maintenance of electric, telephone, water, gas and sanitary sewer Lines and facilities, (b) heating and air-conditioning Lines and facilities, (c) cable or master television antenna Lines and facilities, (d) storm drains and drainage Lines and facilities, and (e) walkways, pedestrian and vehicle accessways and landscaping, as such easements are recorded or are needed to service the Development or any portion thereof, are hereby reserved by Declarant and Declarant's successors and assigns together with the right to grant and transfer the same.

**Section 6.4 Easements for Ingress, Egress and Support.** Unless designated Exclusive Use Common Area, which use is restricted as described on the Condominium Plan or this Declaration for the benefit of less than all Units, there is appurtenant to each Condominium nonexclusive rights of ingress, egress and support, if necessary, through, on, upon or over the Common Area, subject to the Association Rules.

**Section 6.5 Encroachment Easements.** In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or Condominium Plan. As such, each Unit and Exclusive Use Common Area within the Development is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, movement, settlement or shifting of any building or any similar cause. Each Unit, or portion thereof, and the Common Area as the dominant tenement has an easement over any other Unit, or portion thereof, or the Common Area, as applicable, as the servient tenement for the purposes of accommodating any such encroachments described in the previous sentence. In addition, each Unit is subject to such encroachments by the Common Area as may now exist or may hereafter be created by any of the causes referred to in this Section. There shall be valid easements for the existence and maintenance of said encroachments as long as they shall exist and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional act of willful misconduct of

such Owner or Owners. In the event a structure is partially or totally destroyed and is then repaired or rebuilt in substantially the same manner as originally constructed, the Owners of each Condominium agree that minor encroachments over adjoining Units or the Common Area due to such reconstruction shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units where HVAC equipment, water/utility shut-off valves or other utility facilities are installed, an easement over the Common Area into which said equipment encroaches shall exist for the purpose of maintenance, replacement and repair of said equipment.

**Section 6.6     Right to Grant Easements and Licenses.** In addition to the designated Exclusive Use Common Areas shown on the Condominium Plan, Declarant reserves the right to grant easements or licenses over, under, across or through the Common Area for the use by any third party, an Owner or Owners of contiguous property, the general public or government agency, including, without limitation, the Commercial Parcel. Any such easement or license may be conveyed or established by the Declarant before the last close of escrow for sale of a Condominium in the Project. The purpose of the easement or license, the portion of the Common Area affected, the Condominium to which the easement is appurtenant (if applicable), and any restrictions on use of the easement area shall be identified in a written document executed the grantor and grantee, and with respect to an easement, recorded in the Official Records. No such grant of easement or license shall give rise to any right to compensation or adjustment of a sales price for a Unit by refund or otherwise.

Easements over, under and through portions of the Residential Parcel may also be granted pursuant to the terms of the Reciprocal Easement Agreement. Reference is made to the Reciprocal Easement Agreement for further detail concerning any applicable easements. Without limiting the generality of the foregoing, Declarant shall have the express right to grant easements in favor of the Commercial Parcel Owner, Commercial Unit Owner(s) and their tenants, customers, guests and other invitees for the purposes of access to and use of the Common Area of the Residential Parcel or portions thereof, with such easements to include, without limitation, easements for access to and use of roof areas, mechanical, equipment and utility areas and facilities and equipment, elevators, lobby areas, garbage areas and facilities, stairways, and other accessways in the Residential Parcel.

**Section 6.7     Right of Entry.**

(a)     **Association.** The Association shall have the right to enter each Condominium and Exclusive Use Common Area to inspect the Development, and may take whatever corrective action it determines to be necessary or proper, consistent with this Declaration and the Governing Documents. The Association shall have the right to enter any Unit in order to perform any maintenance obligations of the Association pursuant to this Declaration, which right shall include, without limitation, an easement over any corridor or demising walls that may be located within the boundaries of a Unit. Entry onto any Condominium Unit or Exclusive Use Common Area under this subsection may be made after at least forty-eight (48) hours advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Condominium or and Exclusive Use Common Area caused by entry under this subsection shall be repaired by the Association.

(b)     **Declarant.** Declarant hereby reserves for itself, and for its agents, employees, contractors and/or subcontractors (collectively, "Declarant Parties") the right to enter any Unit and the Common Area (i) to inspect any Unit, the Common Area, and all improvements thereon, (ii) to complete and/or maintain or repair any improvements within any Condominium Unit, Exclusive Use Common Area and/or the Development Declarant determines necessary or proper, in its sole discretion, (iii) to perform any warranty work Declarant determines necessary or proper in its sole discretion, (iv) to comply with requirements for the recordation of the Map or Condominium Plan or the grading or construction of the Development, and (v) to comply with requirements of applicable governmental agencies. Declarant

shall provide at least forty-eight (48) hours notice to an Owner prior to entry into the Owner's Unit or Exclusive Use Common Area under this subsection except for emergency situations, which shall not require prior notice, but shall require notice to the Owner within seven (7) days after such entry was made. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After the inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations for action Declarant Parties believe is appropriate for the Association to take to maintain improvements for which the Association is responsible. Any physical damage caused by entry under this subsection shall be repaired by the Declarant or the Declarant Party that caused the damage. This right of entry includes, but is not limited to, entering into one Unit or Exclusive Use Common Area to perform work which benefits another Unit(s) or Exclusive Use Common Area. Unless otherwise specified in the initial grant deed of the Condominium Unit from Declarant, this right of entry shall automatically expire eleven (11) years from the last close of escrow for the sale of a Condominium in the Development.

**Section 6.8     Public Easements.** There shall be easements over portions of the Project and Development in favor of the general public or government agency as shown and described on the Map, the Condominium Plan, as required by the City or other state or local governmental agencies, and as may be declared, reserved or agreed upon by Declarant as provided in this Declaration.

**Section 6.9     Communications Facilities.** Declarant hereby reserves for its benefit and for the benefit of Declarant Parties, and grants to the Association on a nonexclusive basis, the right to install, maintain, repair and replace a satellite or other communications device on any roof area in the Development, provided that such installation shall be in conformance with all applicable laws and regulations.

**Section 6.10     Window Washing Equipment.** Declarant hereby reserves and grants to the Association a non-exclusive easement over the roof areas in the Development and over any Exclusive Use Common Area deck areas as reasonably necessary for the maintenance, storage and operation of window washing and other equipment as may be reasonably necessary to wash windows within the Development and to perform the Association's inspection, maintenance and repair obligations under this Declaration. Such easement rights include, without limitation, the right of the Association to access any portion of the Condominium Building, Units, and Exclusive Use Common Area deck areas, as may be reasonably necessary to use, operate, maintain, repair and replace such equipment. Each Owner is obligated to cooperate with the Association in connection with the Association's exercise of its rights hereunder. Each Owner and occupant of a Unit shall cooperate with the Association to provide access through the Unit in connection with the washing of windows which are the responsibility of the Association to wash.

**Section 6.11     Easements and Rights in Favor of Declarant.**

(a) **Easements for Construction, Marketing; Inspection, Maintenance and Repair.** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, together with the right to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over, across and under, any portions of the Project as is reasonably desirable and necessary to: (1) undertake and complete the work of development, construction, sales, marketing, leasing, conveyance and/or inspection, maintenance, repair and replacement of any improvements on the Property or Project, (2) perform any warranty activities or rights to inspect, repair or replace granted to Declarant under this Declaration, the Title 7 Master Declaration, any warranty or applicable laws or regulations, and (3) exercise its rights and perform its obligations under the Reciprocal Easement Agreement; provided that such rights do not impose any obligation on Declarant to perform any inspection, maintenance, repair or replacement unless otherwise required by the Declaration. The rights

described herein shall also include the right of Declarant to temporarily restrict access to certain areas of the Property in connection with such activities.

(b) **Easements for Signage** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, easements on, over, under, through and across the Common Area to install, maintain, repair and replace, identification, promotional, sales, marketing, leasing and other signage, banners, flags, and other advertising materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of the rights described in Section 11.4 of this Declaration.

(c) **Declarant's Easements to Exercise Rights**. Declarant hereby reserves to itself, with the right and power to grant the same, a non-exclusive easement over the Property to perform its duties and exercise its rights, powers and obligations under this Declaration, including, without limitation, the rights and powers described in Section 11.4.

(d) **Installation of Additional Improvements**. Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, with the right and power to grant the same, the right to install and operate within the Common Area such landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, utility, internet, television and telecommunication facilities, infrastructure and other facilities and improvements, as may be deemed appropriate by Declarant and/or required by applicable laws or regulations or in connection with the issuance of any permits or approvals for the benefit of Declarant; provided that such right does not impose any obligation on Declarant to perform any such activities unless otherwise required by the Declaration. In addition, Declarant hereby reserves to itself a non-exclusive easement over, upon, under and across the Common Area for purposes of access to the Property and Project as may be reasonably necessary in connection with such activities.

**Section 6.12 Suspension of Rights to Use Common Area Amenities**. All of the easements in favor of the Residential Unit Owners are subject to the right of Declarant and the Association, after notice and hearing, to temporarily suspend a Residential Unit Owner's rights as a Member (as well as the rights of a Tenant or Occupant of a Residential Unit Owner) to use any Common Area amenities pursuant to the terms of the Governing Documents.

## ARTICLE 7

### **USE RESTRICTIONS**

In addition to all of the conditions and covenants contained herein, the use of the Development and each Residential Unit therein is subject to the following restrictions:

**Section 7.1 Residential Use**. No Residential Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and guests, and no trade or business shall be conducted in any Residential Unit, except that Declarant, its successors or assigns, may use any Residential Unit or Units in the Development owned by Declarant for a model home, sales, leasing and marketing office, construction management office, Association office and/or customer service office until the last Condominium on any portion of the Property is sold by Declarant. A Residential Unit may be used as a residence with an included executive or professional office by the Owner or other occupant of the Unit, thereof, provided that (i) such use does not interfere with the quiet enjoyment by other Residential Unit Owners of their Residential Units, (ii) there is no signage visible from the exterior of the Unit, (iii) such use does not include visiting clients or employees, and (iv) such use is in compliance with local codes and ordinances.

(a) Subject to applicable regulations of the City and County of San Francisco, residents shall be limited as follows: with the exception of infants and children, no more than two (2) persons per bedroom in any Residential Unit shall be permitted as permanent residents. A "permanent resident" means any person residing in a Residential Unit more than sixty (60) days out of any twelve (12) consecutive month period. One (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Residential Unit.

(b) No health care facilities operating as a business or charity shall be permitted in the Development.

(c) No Residential Unit or any portion of any Residential Unit in the Development shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "vacation rental," "travel club," "extended vacation," or other membership or time interval ownership arrangement. Short term rentals or leasing of a Residential Unit or room or space therein, or otherwise providing short term accommodation or lodging to third parties in a Residential Unit or room or space therein, for a period of time less than that permitted by Section 7.7 below, shall not be permitted. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy or possess the Residential Unit or Units, or any portion of the Residential Units in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of six (6) months or less. Provided, this Section shall not be constructed to limit the personal use of any Residential Unit or any Portion thereof in the Development by any Owner or his social or familial guest.

**Section 7.2     Nuisance.** No nuisance, use or practice is permitted in the Development which is detrimental to the health, safety and welfare of the residents or interferes with their peaceful possession or proper use of their Units. No use is allowed in the Development which creates conditions that are unreasonably hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise or which unreasonably increases the rates of insurance for the Development, causes an insurance policy to be canceled, causes a refusal to renew an insurance policy or impairs the structural integrity of any building. To the extent storage of materials is permitted pursuant to the Governing Documents, such storage must be in accordance with building, fire, health and safety requirements as set forth by governmental authorities and insurance carriers. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance or is unreasonable pursuant to this subsection, subject to the terms of this Declaration. Any commercial use or operation in the Commercial Parcel permitted under the Reciprocal Easement Agreement and in compliance with applicable ordinances of the City and County of San Francisco shall not be considered a nuisance, noxious or offensive, and shall not be subject to restrictions thereon, except as may be provided in the Reciprocal Easement Agreement.

### **Section 7.3     Vehicle Parking and Operation Restrictions.**

(a) There is no vehicular parking in the Residential Parcel. The only vehicular parking in the Project is located in the Garage Parcel. Parking in the Garage Parcel by any Owner or Occupant of the Development is not guaranteed by Declarant. Any parking and operation of vehicle(s) in the Project shall be subject to terms and conditions provided by the Garage Parcel Owner or parking garage operator. It is anticipated that parking in the Garage Parcel may be provided by the Garage Parcel Owner or parking garage operator to some, but not all, Owners or Occupants, subject to the terms and conditions of a parking agreement between the Garage Parcel Owner or parking garage operator and the

person parking in the garage. The types and sizes of vehicles that may park in the Garage Parcel may be restricted.

(b) Reference is made to the Reciprocal Easement Agreement for further details concerning the availability of parking for Owners and Occupants of the Residential Units and for applicable rules, regulations, restrictions and costs related thereto.

#### **Section 7.4     Animals.**

(a) No animals, reptiles, snakes, rodents, birds, fish, livestock or poultry shall be kept in any Unit or elsewhere within the Development, except that domesticated dogs, domesticated cats, birds kept in bird cages, fish kept within an aquarium, or other animal as described in the Association Rules, may be kept as a household pet within any Unit if such animal(s) are not kept, bred or raised for commercial purposes. With the exception of fish, there shall be no more than a total of one (1) pet kept in any Unit, provided that one (1) additional certified service or support dog may be permitted in a Unit, subject to existing law and reasonable rules imposed by the Association. In no event shall any fighting breed of dog be kept in any Unit or elsewhere in the Development, including, without limitation, Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier, Rottweiler, American Bull Dog, Tosa Inus, Doberman Pinscher, Presa Canario, Chow, Fila Brasileiro, Argentine Dogo, Akita, Mastiff, Alaskan Malamute, or Wolf hybrid, and all mixes of these breeds, except as otherwise required by law. The keeping of any dog or other pet shall be subject to applicable ordinances and regulations of the City and County of San Francisco and its agencies. Notwithstanding the foregoing, "disability assistance" dogs or other pet as certified by the applicable government authority for assistance of visually impaired persons may be permitted as required by law or approved by the Board, except that they shall be kept on a leash on the Common Area. An Owner or Occupant of a Unit, or other person bringing a disability assistance dog or pet onto the Development shall provide valid written verification upon request by the Association or its agent of the dog or pet's status as a licensed disability assistance animal. Notwithstanding the foregoing, if an Owner or Occupant feels threatened by another Owner's or Occupants disability assistance dog or animal, then the Board shall implement a process for reasonable rules and regulations concerning such disability assistance dog or animal, which may include required muzzling, leashing or other rules or restrictions, and the Board may refer such matter to a dispute resolution process to be determined by the Board. Such restrictions are subject to any modification required by law.

(b) The keeping and control of each type of pet shall be expressly subject to such controls or prohibitions as may be reasonably adopted by the Board from time to time. No pet may be kept on the Development if the Board, after a hearing, determines, in its sole good faith judgment, that it would result, would continue to result or has resulted in substantial noise or other annoyance or that it would be, would continue to be or has been obnoxious, menacing or threatening to a person of ordinary sensibilities living within a Unit in the Development. The Board shall specifically have the right to prohibit the keeping of any pet on the Property which is found to be a nuisance. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board, unless the Board determines it is an emergency.

(c) No pets shall be allowed in the Common Area except as may be permitted by the rules of the Association. No dog whose barking unreasonably disturbs other Owners shall be permitted to remain on the Development. Owners shall prevent their pet from soiling any portion of the Common Area and shall promptly clean up any fouling by their pet. Declarant, the Association or the Association property manager may cause any unauthorized pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City and County of San Francisco, by calling the appropriate authorities, whereupon the Owner (upon payment of all expenses connected therewith) may repossess the pet. Each person bringing or keeping a pet upon the Development shall be liable to the

other Owners, their family members, guests, Invitees, Association personnel, property manager and staff, and tenants for any injury or damage to Persons or property proximately caused by such pet. Notwithstanding anything contained herein, each owner of a pet shall comply with each applicable ordinance and regulation of the City and County of San Francisco and its agencies. Animals may only be fed within the confines of an Owner's Unit; feeding of animals within the Common Area or otherwise outside an Owner's Unit is prohibited.

**Section 7.5     Garbage and Refuse Disposal.** All garbage, trash, recycling and compost shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Garbage, trash, recycling, compost and other waste shall, at all times, be kept in designated sanitary containers. All equipment for the storage or disposal of garbage, trash, recycling and compost shall be kept in a clean, orderly and sanitary condition. Garbage, trash, recycling and compost shall not be left outside an Owner's Unit in a hallway or other Common Area. All garbage, trash, recycling and compost shall be placed in the applicable trash chutes or other available proper trash receptacle; provided that any trash chutes shall only be used for the permitted type of material. No oversize or bulky items whatsoever shall be placed in any trash chute that may cause the trash chute to become backed-up or clogged. Use of the trash chutes shall be subject to Association Rules, including penalties that may be assessed against an Owner for violation of such Rules.

**Section 7.6     Rental Restrictions.**

(a) Pursuant to the Inclusionary Housing Manual, the Owner of a BMR Unit regulated by MOHCD is not permitted to rent, lease or sublease any part or the entire BMR Unit without the prior written consent of MOHCD. As further described in the Inclusionary Housing Manual, an Owner may be permitted to rent, lease or sublease that Owner's BMR Unit in certain limited circumstances, subject to the approval of MOHCD. In the event that MOHCD does permit an Owner to rent, lease or sublease that Owner's BMR Unit, then, in addition to any rules or restrictions imposed by MOHCD, the following rules and restrictions in this Section 7.6 shall apply to any such rental, lease or sublease of a Unit in the Development. With respect to those certain Units that are intended to eventually be released from the affordability restrictions and related regulations imposed by MOHCD, after such Units are so released and are no longer subject to the affordability restrictions and related regulations imposed by MOHCD, those certain Units shall not be subject to the rental restrictions in this Section 7.6(a), but shall remain subject to the rental restrictions in Section 7.6(b) and (c) below.

(b) No Owner shall be permitted to lease that Owner's Unit for transient or hotel purposes which shall be defined as (i) rental for any initial period of less than one (1) year, or (ii) any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid services or the furnishing of laundry and linen subject to a fee, or (iii) any rental if the occupants or temporary users are renting the Unit, or room or other space therein as a short-term accommodation or lodging for an initial period of less than one (1) year. Subject to the foregoing restriction, the Owner of the Unit shall have the right to lease that Owner's Unit provided that the lease is for the entire Unit (the taking in of a roommate by an Owner shall not be a violation of this clause), is in writing and is expressly made subject to the Governing Documents and further provided that the breach by the tenant of such covenants, conditions, restrictions, limitations, uses or rules shall also be a breach of the lease.

Notwithstanding the foregoing, the rental and leasing restrictions in Sections 7.6(a) and (b) above shall not apply to a Mortgagee in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding or any other deed or other arrangement in lieu of foreclosure; provided, however, that all Owners and Mortgagees shall be required to follow the rules in Section 7.6(c) below in connection with any rental or leasing of a Unit in the Development.

(c) In the event an Owner does lease that Owner's Unit as herein provided, that Owner shall, within three (3) days of execution of the lease, provide the Board or the property manager with the following:

- (1) Name and contact information of each permitted occupant.
- (2) Current address, telephone number and email of the Owner.
- (3) A statement by the Owner that the tenant has received a copy of the Declaration and any amendment thereto, the Articles, the Bylaws, the Association Rules, any parking rules, any rules and regulations of the Architectural Control Committee, and that such tenant has been advised of any obligation that tenant may have thereunder. Such statement shall include notice to the tenant of the Association's and Declarant's right of entry into the Unit after forty-eight (48) hours notice or in the event of an emergency.
- (4) A statement by the Owner that the lease does not relieve the Owner of that Owner's obligation to pay each and every Assessment to the Association.
- (5) The duration of the lease.
- (6) If requested by the Association or property manager, an acknowledgment by the Owners and tenant of any particular Association Rules concerning leasing in the Development.
- (7) A copy of the lease, if requested by Declarant or the Association.
- (8) In the event that any tenant's lease is renewed, the Owner shall notify the Board or the property manager if there are changes to any of the information described in this Section 7.6(c) above.

**Section 7.7 Radio and Television Antennas; Satellite Dishes; External Lines, Wiring or Equipment.**

(a) No television, video or radio pole, antennae, satellite dish, cable or other transmission and/or reception equipment, other similar external fixtures (collectively "Antenna Equipment"), other than that originally installed by Declarant or approved by the Architectural Control Committee and any replacements thereof, shall be installed, constructed or maintained on or within the Development:

- (i) on or within any property which is not within the exclusive use or control of the Unit Owner where the Owner, as provided in 47 C.F.R. § 1.4000 and any other applicable laws, rules and decisions related thereto (collectively, "Antenna Laws") or restrictions;
- (ii) in any location in the Development if, in the opinion of the Board, such location would be unsafe, or compromise any exterior surface of any building or roof area such that moisture may intrude into the building; or
- (iii) that is of a size greater than permitted by the Antenna Laws.

(b) Before any Antenna Equipment may be installed in the Development, written notice of such installation shall be provided to the Association. Any construction, installation or maintenance of any Antenna Equipment that is greater than one meter or less in length or diagonal

measurement and/or not in strict compliance with subsections (i)-(iii) above, shall be permitted only with the prior written approval by Declarant or the Architectural Control Committee. The Declarant or Association may impose reasonable restrictions and architectural guidelines for the construction, installation and maintenance of any Antenna Equipment, so long as such restrictions and guidelines are not inconsistent with the Antenna Laws. Such restrictions and guidelines may include, without limitation, location, color, screening, methods of construction and installation, qualifications and insurance requirements for installers or contractors, and indemnification of the Association and its Members related to such construction and installation.

(c) Under no circumstances shall any Antenna Equipment be constructed, installed or maintain on or within the Common Area, including, without limitation, any Common Area roof area or exterior wall, without the prior written approval of Declarant or the Architectural Control Committee.

(d) In the event that any common central radio and/or television antenna system, cable television system, satellite dish or other central television reception system (collectively, "Common Antenna") is installed by Declarant or the Association and designated for shared use by the Unit Owners, an Owner may be required to use such Common Antenna in lieu of any private Antenna Equipment. In such circumstances, an Owner may, with prior written approval by the Declarant or Board, connect to such Common Antenna. Before any Owner may connect to any such Common Antenna, such Owner must submit an application to Declarant or the Board, and the Declarant or the Board shall have the right to impose reasonable conditions on any connection to and use of such Common Antenna. Each Owner shall be responsible to set up and pay for its own individual account with the service provider, at no cost to the Association.

(e) Declarant or the Association may, but are not obligated to, provide a limited and defined area on a roof of a Condominium Building that may be used by the Owners for the purposes of installation of Antenna Equipment; provided, however, that any such installation shall be strictly subject to rules and regulations imposed by Declarant or the Board. In such circumstances, an Owner may be required to use such defined area rather than any other roof area for installation of Antenna Equipment. Before any Owner may use any such area, such Owner must submit an application to Declarant or the Board, and Declarant or the Board shall have the right to impose conditions on the use of such area.

(f) In order to prevent any water intrusion or leakage into the roof or walls of any building in the Development due to the creation of holes or punctures in connection with the installation of any Antenna Equipment, there shall be absolutely no drilling, holes or other punctures in any portion of the exterior of any building in the Development including, without limitation, any exterior walls, floors, ceilings or roof areas, without the prior written approval of Declarant, Board or Architectural Control Committee. Any such actions by an Owner or Occupant of a Unit, without the prior written approval of Declarant, Board or Architectural Control Committee, shall void any applicable warranties provided to a Unit Owner by Declarant related to finishing, water intrusion or leakage caused by, arising from or related to such actions.

(g) No Antennae Equipment shall be constructed or installed in any portion of the Development without first obtaining all required governmental permits.

(h) Nothing herein this Section 7.8 shall be construed to (i) restrict or limit in any manner Declarant's right to install any Antenna Equipment or any other similar improvements on any portion of the Property in connection with the development and construction of the Development, Project or any portion thereof, or (ii) restrict Declarant's or the Board's right to authorize any cable, telecommunication, television or radio franchisee or other provider of similar services to provide cable television, internet, satellite dish, telecommunication, radio or other similar services to the Development

or Project.

**Section 7.8     Power Equipment; Hazardous Materials.** No power equipment, hobby shops or car maintenance, other than emergency work, shall be permitted in the Development. Owners shall not use or keep on the Development any gas, solvent, kerosene, caustic material, harmful chemicals, inflammable substance or other combustible substance, or other hazardous material. All cleaning materials or other potentially harmful or hazardous materials shall be stored and used in a safe manner and in strict compliance with product guidelines and in compliance with any applicable governmental rules or regulations. No tank for the storage of gas, liquid, explosive or any flammable substance shall be stored on or in the Development unless such installation is done by Declarant.

**Section 7.9     Liability of Owners for Damage.** The Owner of each Condominium shall be liable to the Association for all damages to the Common Area caused by such Owner or any tenant, guest, Invitee, pet, or occupant of such Owner's Unit.

**Section 7.10     Storage.** Except as otherwise provided in this Declaration, nothing shall be stored in the Common Area (except for storage areas designated for storage purposes, if any) without the prior written consent of the Board. No perishable items, combustible substance or other hazardous material whatsoever shall be stored in any storage area in the Development. Each Owner is solely responsible for any loss, damage or theft of any items stored in any storage areas or other portion of the Development by an Owner or occupant of an Owner's Unit.

**Section 7.11     Declarant's Sales and Leasing Activities.** Declarant and Declarant's successors and assigns may use any portion of the Common Area and/or one (1) or more of the various Units owned by Declarant from time to time as a sales model, design center or display and sales or leasing office, and may maintain reasonable displays and conduct reasonable activities related to sales and customer service therein, until such time as the last Unit is sold or leased.

**Section 7.12     Signs.** No commercial sign of any kind shall be displayed to the public view on or from any Residential Unit or the Common Area without the prior written consent of the Board subject to the following exceptions:

- (a) Development identification signs or informational signs approved by the Board;
- (b) Signs advertising any Condominium for sale or exchange of a reasonable design and size and in a reasonable location as previously approved in writing by the Board;
- (c) Signs maintained by Declarant in connection with its sales and marketing activities for the Development. Notwithstanding anything contained herein, any sign which is displayed shall conform to each applicable City ordinance and regulation regarding signs; and
- (d) Noncommercial signs may be restricted by the Board as provided in Civil Code Section 4710.

The rights of Owners to display typical and unobtrusive religious, holiday and political signs, symbols and decorations inside their Units of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Unit.

Subject to the provisions of Section 11.4 of this Declaration, no sign of any type or purpose with dimensions greater than twelve inches (12") in height by twenty-four inches (24") in width shall be

displayed on or from any Residential Unit, except for signs maintained by Declarant in connection with sales or leasing activities, which shall not be subject to any restrictions on signage or related advertising. Subject to the provisions of Section 11.4 of this Declaration, no more than one (1) permitted sign shall be displayed from any Unit at any given time.

**Section 7.13 Spas and Hot Tubs; Whirlpool Bathtubs.** Spas and hot tubs shall not be permitted in any Unit. Jetted bathtubs or whirlpool bathtubs shall not be permitted in any Unit without the prior written approval of the Board, which approval may be withheld in the Board's sole discretion. In the event that the Board approves any such jetted bathtub or whirlpool bathtub, use of such item shall be subject to the reasonable rules and regulations of the Board. Any associated motor or other equipment shall be reasonably insulated in order to reduce sound transmission to adjacent Units. In consideration of potential noise intrusion to adjacent units and the occupants thereof, no Owner shall operate any jetted bathtub or whirlpool bathtub in any Unit for longer than thirty (30) minutes during any two hour period between the hours of 7 a.m. and 11 p.m. Such equipment shall not be operated at all between the hours of 11 p.m. and 7 a.m. Owners acknowledge an adjacent Unit may have a jetted bathtub or whirlpool bathtub in compliance with this Section, and that there will be some amount of sounds transference and vibration associated with such equipment that may be heard or experienced from an Owners Unit.

**Section 7.14 Condensation and Ventilation.** The levels of condensation, humidity, moisture, mold and mildew within a Unit can be affected by, among other things, the use of windows and fans, the use of heaters and humidifiers, steam from cooking, shower and bath steam leaks, and other plumbing leaks. To prevent the accumulation of condensation, humidity, moisture, mold, and mildew, it is necessary for Owners to properly maintain, use and ventilate the Units. Owners are advised that no Unit has been provided with air conditioning units or active ventilation systems. Owners are solely responsible for proper ventilation of Units and shall keep windows open to the fullest extent possible during hot weather to ensure cool air circulation and proper ventilation in Units. Fresh air for Owner's Unit is supplied by specially-designed venting systems in the exterior of the curtain wall of the building and the operable windows located in the Units. Units are equipped with vents to allow outside air to circulate through the Units when the windows are closed. The vents built into the window frames should remain open and unobstructed, especially during hot weather, in order to allow air circulation. In addition, exhaust fans serve the kitchens in all Units. Kitchen exhaust fans shall be used at all times when Owners or occupants of Units are cooking food. Owners are advised that exhaust fans may generate noise when in use. Adjacent Units and Units above and below any Unit may share an exhaust shaft. As a result, Owners may hear noise from fans in other Units

**Section 7.15 Water Beds; Aquariums.** Water beds shall not be permitted in the Development. No aquarium containing more than thirty (30) gallons shall be permitted in any Unit.

**Section 7.16 Floor Coverings.** No change in the type of floor covering materials as were originally installed in the Units shall be permitted except with the written consent of the Architectural Control Committee. To reduce sound transmission, all Units above other Units shall have seventy-five percent (75%) of all floor areas in each room except kitchens and bathrooms covered with carpet, rugs or other material approved by the Architectural Control Committee that provides equivalent insulation against sound transmission to the Unit below. Each installation of carpeting shall include carpet padding or carpet cushion which meets or exceeds the specifications for Class 1 padding (Heavy Traffic, Residential or Commercial). All rugs shall be of sufficient thickness and/or shall include padding to provide adequate insulation against sound transmission to the Unit below. The installation of any type of hard surface flooring in a Unit shall include sound dampening and/or insulating materials in order to reduce sound transmission, as approved by the Architectural Control Committee. If any change is proposed to any floor covering in a Unit, the Architectural Control Committee shall require that the replacement covering provide the same or better acoustical characteristics as the floor covering that is

being replaced, including, without limitation, acoustic underlayment designed to reduce sounds transmission.

Certain Units in the Development have been constructed with a Fiberwrap material underneath the flooring installed in the Unit. In no event shall any fiber wrap material be cut or damaged in connection with any maintenance, repair, modification or replacement of any flooring in any Unit. A Unit Owner shall request information from the Board or Association property manager to determine whether such Owner's Unit was constructed with such fiber wrap material, and shall take reasonable precautions and advise its contractors or other flooring installers to take reasonable precautions to not damage any such Fiberwrap material.

**Section 7.17 Conduct Affecting Insurance.** Nothing shall be done or kept in any Unit or in the Common Area or exclusive Use Common Area which will increase the rate of insurance on the Common Area without the prior written consent of a majority of the Unit Owners. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or on any part of the Common Area or which would be in violation of any law.

**Section 7.18 Common Utilities.** No change in the utility requirements of a Unit may be accomplished by an Owner without the prior approval of the Board if such utility is metered on a meter shared by other Units or the Common Area. Except for work by the Declarant, no major power tools or other power-consuming devices shall be operated in the Common Area without prior approval of the Board.

**Section 7.19 Roof Areas.** Except as provided herein, no person except Declarant or a person authorized thereby, and except maintenance personnel authorized by the Board or Association manager, shall walk on any roof area without the prior consent of the Board or Association manager.

There are roof terraces located on the second (2nd) and eleventh (11th) floors of the Project that may be used by the Owners and occupants of Units, as well as their guests and invitees. All persons who access the roof terraces do so at their own risk. All persons shall take particular precautions when occupying the roof terraces. For example, all persons shall occupy the roof terraces at a safe distance from the edges of the roof terraces, especially during windy, rainy or stormy weather conditions. Children and inattentive persons must never be left unattended. All persons shall maintain a safe distance from, and avoid interference with, any mechanical, plumbing, HVAC and ventilation equipment located on the roof terraces. Failure to take safety precautions when occupying the roof terraces could result in a young or inattentive person, or anyone else, to fall and sustain serious or fatal injury. **CHILDREN AND INATTENTIVE ADULTS SHALL BE SUPERVISED ON THE ROOF TERRACES AT ALL TIMES AND CARE SHOULD BE TAKEN TO MAINTAIN A SAFE DISTANCE FROM THE EDGES OF THE ROOF TERRACES.**

The Association reserves the right, but shall not be required, to authorize certain activities, parties, events, and gatherings, including, but not limited to, social gatherings and events in which music is played and food and drinks, including alcoholic beverages, are served. Such activities and gatherings may cause noise, vibrations, odors, and other disturbances to be experienced from within the Units, in particular those Units located adjacent to, directly below, or directly above the roof terraces. Use of the roof terraces shall be subject to Association rules and regulations. No person shall use the roof terraces for purposes other than those purposes explicitly approved by the Association. When using the roof terraces, all persons are expected to be respectful of neighboring Unit occupants.

**Section 7.20 Owner Responsibility for Guests, Occupants, Invitees.** Each Owner shall be responsible for compliance with the provisions of this Declaration and the Bylaws and any Association Rules by such Owner's guests, Occupants, co-inhabitants, family members and other Invitees (including, without limitation, employees, customers, guests and Invitees of any such party).

**Section 7.21 Compliance with Laws.** No Owner shall permit anything to be done or kept in his or her Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

**Section 7.22 Damage to Common Area and Personal Injuries.** Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, Tenants, Occupant, guests, co-inhabitants, or Invitees to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of the deed for his or her Unit, agrees for himself or herself and for the members of his or her family, contract purchasers, co-inhabitants, tenants, Occupants, guests or Invitees to indemnify each and every other Owner and to hold such Owner harmless from, and to defend such Owner against, any claim by any Person for personal injury or property damage occurring (a) within the Unit of that particular Owner, and (b) within any exclusive easements over the Common Area appurtenant to that Owner's Unit, unless the injury or damage occurred by reason of the negligence of another Owner temporarily visiting in said Condominium or portion of the Common Area subject to an exclusive easement appurtenant to the Unit or is fully covered by insurance.

**Section 7.23 Noise Abatement.** All stereos, televisions, radios, tape recorders, computers, vacuum cleaners, hair dryers, exhaust fans, tools, exercise equipment or similar noise producing products located in an Owner's Unit shall be operated in such a manner that they cannot be unreasonably heard in any other Unit in the Development during the hours of 11 p.m. to 7 a.m. Each Owner and occupant of a Unit shall comply with any Rules of the Association with respect to noise and shall cause no noise which unreasonably disrupts another Owner or occupant's use of their Unit. Speakers and flat screen televisions shall not be placed on demising walls or directly on floors without taking appropriate mitigating measures to reasonably reduce sound transmission.

**Section 7.24 Window Coverings.** Curtains, drapes, blinds, shutters or other window coverings visible from the street or Common Area shall be restricted to a white or off-white color (except as may be installed by Declarant), unless expressly approved by the Board or the Architectural Control Committee. Windows shall not be covered with newspaper, aluminum foil, or other materials not designed for covering windows. Any window blinds installed by Declarant in any Unit shall be installed as a benefit to the Owner of that particular Unit and shall not be deemed to be part of the Development. Each Owner shall be responsible for the maintenance, repair, replacement, and cleaning of the window coverings once the Owner purchases and takes possession of a Unit. Owners shall take particular safety precautions in the maintenance of the window coverings. For example, Owners shall keep long pull cords out of the reach of small children and pets, as such pull cords could cause serious or fatal injury to children and pets. Owners are advised that no Unit has been provided with air conditioning units or active ventilation systems. Therefore, to prevent excessive heat gain within the Units, Owners shall lower window coverings when the sun is shining directly into the Units.

**Section 7.25 Architectural Control.** In order to promote a harmonious and cohesive physical environment within the Development, and to prevent additions, alterations, or replacements which may adversely affect property values throughout the Development, the Board is empowered to promulgate and enforce architectural controls, guidelines, rules and restrictions as described herein this Section. The ultimate responsibility shall remain with the Board, but the Board may delegate its authority to an Architectural Control Committee (the "Committee") as provided herein and in Article XI of the Bylaws.

The members of the Committee shall be appointed as described in Article XI of the Bylaws. The Board or the Committee shall establish reasonable, objective standards clearly ascertainable to the Owners, and shall not act arbitrarily or capriciously in the process of reviewing plans. Such standards may include construction guidelines, rules and regulations, including, without limitation, insurance, permitted hours of construction, scheduling of construction activities, procedures for access to a Condominium Building, use of elevators, storage of materials, clean up, control of dust and debris, noise controls, and other typical construction guidelines. The emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Development, as well as the integrity of acoustical, utilities, structural and waterproofing systems of a Condominium Building. The Board and the Committee shall base their decisions on what is in the best interests of the Development as a whole, and not upon what will appease a particular Member or group of Members. Both the Board and the Committee shall operate pursuant to the following guidelines:

(a) No construction, installation, addition, improvement, repair, wiring, exterior painting, replacement, alteration or removal of any part of the Development or any building structure, including flooring, interior and exterior walls, or any portion of a Unit that can be seen from the Common Area or any other Unit, or replacement or modification of any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling which might in any way increase the sound transmission, resonance or reverberation from one Unit to another, shall be commenced, installed, erected, painted, repainted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board or by the Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may decorate, paint or repaint the interiors of the Owner's Unit, provided such decorating does not impair the structural, mechanical or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including roofs or bearing walls), and does not involve flooring of the Unit or the window covering of the Unit.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the Board or Architectural Control Committee for approval as to quality of workmanship and design and harmony with existing improvements, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with the original plans and specifications or plans and specifications previously approved by the Board or by the Committee. Nothing contained in this Section shall be construed to limit the right of an Owner to paint or remodel the interior of that Owner's Unit.

(c) Any decision of the Committee to permit improvements, modifications or alterations shall not be unreasonable, arbitrary or capricious and shall not violate any governing provision of law. If such decision disapproves the proposed change or changes, it shall include both an explanation of the reason for disapproval and a description of the reconsideration procedures of the Committee. Reconsideration of any such disapproval shall occur at an open meeting of the Committee conducted in accordance with the Bylaws, and the Committee's written decision thereon shall be issued within the time frames specified in the Architectural Guidelines. The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Condominium as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when then proposed work will result in improvements that can be seen from any other Condominium, the Common Area, or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously. The Committee may impose terms and conditions on any approval, including: contractor licensing requirements; insurance requirements; completion and labor and materials bonds or other acceptable collateral; and construction regulations such as authorized

hours of construction, access restrictions, noise restrictions, and clean-up requirements. Any member of the Committee or any authorized agent of the Committee from time to time and anytime during normal business hours may enter any Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee.

(d) Approval of plans or specifications by the Board or the Committee shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and its members, harmless from any and all liability arising out of such approval.

(e) Before commencement of any alteration or improvements to a Unit or Exclusive Use Common Area the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

(f) All work approved by the Board or the Committee shall be completed in compliance with the approvals granted, and shall be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

(g) The Board or the Committee or its authorized agent or representative shall have the right to inspect work within sixty (60) days after a notice of completion has been delivered to the Board or the Committee by the Owner. If after such inspection the Board or Committee determines an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural review functions under this Section 7.25, the Committee shall notify the Board, and the Board shall provide notice and a hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural review functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Development, or to 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 (i) cause the non-complying improvement to be removed, (ii) remedy the non-compliance, or (iii) institute legal proceedings to enforce compliance or completion.

(h) The Committee or the Board may condition its approval upon the Owner recording a "Notice of Non-Responsibility" or similar document protecting the Association or other Owners from any mechanics lien that may be recorded because of such alteration or improvement.

(i) Nothing contained in this Section 7.25 shall be construed as requiring Declarant to obtain any approval for the construction, installation, completion or renovation of the Development or any improvements thereon. In addition, Declarant, or its successor or assign shall not be subject to the review or approval requirements of this Section 7.25 in connection with any repairs or modifications

made to any improvements as may be required by law or pursuant to an agreement with any Unit Owner or the Association.

(j) Notwithstanding any provision herein to the contrary, in no event shall any Owner or occupant puncture or cause any holes or opening in any deck or patio surface or wall without the express written consent of the Board or Committee. If approved, any such hole or opening in a deck or patio surface or wall shall be specifically designed to prevent any leakage, seepage or intrusion of water or moisture of any kind into the building.

(k) In reviewing plans, the Architectural Control Committee shall comply with the requirements of Civil Code Section 4765, and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between the provisions of this Section 7.25 and Civil Code Section 4765, Civil Code Section 4765 shall control to the extent of the conflict.

(l) The Board or Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. Failure of the applicant to make all payments required hereunder shall relieve the Committee from the time constraints of this section until such payments are made.

(m) **Architectural Control Committee.** The Architectural Control Committee shall consist 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 original final Public Report for the Development. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Development have been sold pursuant to a Public Report, or until the fifth anniversary of the sale of the first condominium in the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. In the event of death or resignation of any Committee member, said member's replacement shall be appointed by whomever (the Board or Declarant) appointed that member. A majority of the members of the Committee may appoint a single member to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant thereto.

(n) The provisions of this Section 7.25, and the actions of any Unit Owner, the Board and the Architectural Committee hereunder shall be subject to and shall conform to the requirements of the Reciprocal Easement Agreement.

**Section 7.26 Legal Action.** The failure of any Owner to comply with any provision of this Declaration, the Bylaws or the Association Rules, if any, shall give rise to a cause of action in the Association and/or any aggrieved Owner for the recovery of damages or for injunctive relief, or both, including reasonable attorneys fees, costs and expenses as may be determined by the court.

**Section 7.27 Use of Common Area.** Use of the Common Area (including, without limitation, any Common Area amenities) is subject to the Association Rules, as may be amended from time to time by the Board. Subject to Sections 3.9, 3.10, 4.18 and 6.12 of this Declaration, the rights of other Owners, and subject to the Association Rules, all persons residing within the Development may use Common Area amenities and facilities as long as they abide by the terms of this Declaration and applicable Association Rules. Nothing shall be stored in or kept in the Common Area without the prior consent of the Board (except for areas designated for storage purposes, if any). No Owner shall permit anything to be physically done in or kept in the Common Area or any other part of the Development which would

unreasonably interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No Owner, occupant or Invitee shall perform any act which results in damage to the Common Area. The provisions of this Declaration concerning using, maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

(a) **Use of Common Area Courtyard Areas; Restrictions on Dogs.** No activities shall occur in any Common Area courtyard areas that will cause an unreasonable disturbance to Unit Owners or Occupants of other Units as determined by the Board. There shall be no use of barbecues or other outdoor cooking in any of the Common Area courtyard areas or any roof area. No Unit Owner shall leave any personal items in any Common Area courtyard areas when that Unit Owner is not present. Use of the Common Area courtyard areas shall be subject to the Association Rules. Such Rules may include, without limitation, restrictions on hours of use, noise, types of activities, fees for use and/or clean-up, penalties for violation of applicable rules, and other such restrictions as may be promulgated by the Board. Dogs shall not be permitted in the Common Area courtyard areas; provided, however, if the Board in its discretion establishes a designated "dog area" then dogs may be permitted in such "dog area," subject to strict compliance with the Association Rules related thereto. In the event the Board determines to establish a designated "dog area," then such area shall be regularly cleaned in order to minimize unsightliness and odors.

**Section 7.28 Moving In/Out and Contractor Rules.** The Board may adopt Rules regulating the moving of property in and out of a Condominium and means of ingress and egress to and from the Condominium. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for elevator cabs, disposal of moving boxes, and the payment of fees or posting of collateral or security to pay for damage to the Common Area. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for elevator cabs, disposal and storage of construction materials and equipment, construction access routes, and the posting of collateral or security to pay for any damage to the Common Area.

**Section 7.29 Smoking Restrictions.** In order to engender a healthy and environmentally friendly atmosphere, and to reduce second-hand smoke that may be experienced by the Owners and Occupants of the Development, there shall be no smoking of any kind in any portion of the Development, except as otherwise required by law. In the event the Board is legally required to allow an Occupant of a Residential Unit to smoke, such smoking be strictly limited to the interior of that Occupant's Residential Unit, and such Occupant shall take all precautions as may be reasonably requested by the Board in order to reasonably eliminate smoke escaping from that Occupant's Unit, including, but not limited to, the use of extract fans to ventilate the Unit and limit smoke from entering the Common Area of the building or other units. In no event shall any smoking whatsoever be permitted in any Common Area of the Development, including, without limitation, any lobbies, hallways, corridors, walkways, lounges, garden areas, amenity areas, conference rooms, offices, community rooms, courtyards, decks, storage rooms or roof areas. The Board may adopt Association Rules concerning smoking in the Development, including, without limitation, fines, penalties and other disciplinary actions for violation of such Rules. All smoking in the Development shall be subject to the applicable ordinances of the City and County of San Francisco and State of California that may further restrict or prohibit smoking in the Development.

## ARTICLE 8

### MORTGAGE PROTECTION

**Section 8.1     Validity of Mortgage Lien.** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

**Section 8.2     Notice to Eligible Mortgagees and Eligible Insurers and Guarantors.** Upon written request to the Association identifying the name and address of the Eligible Mortgagee or Eligible Insurer or Guarantor and the applicable Unit address, such Eligible Mortgagee or Eligible Insurer or Guarantor shall be entitled to timely notice of:

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

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unpaid for a period of sixty (60) days;

(c) Any default in the performance of an obligation under the Governing Documents by an Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unperformed for a period of sixty (60) days;

(d) Any lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; or

(e) Any proposed action which would require the consent of Mortgagees of First Mortgages as specified in Section 8.6.

Any failure by the Association to give such notice of default shall not in any event relieve the Owner of responsibility to cure the default or prevent the Association from enforcing the performance of the defaulted obligations by any of the procedures provided for in the Governing Documents.

**Section 8.3     Notice of Condemnation or Destruction.** In the event of the total or substantial destruction of, or the commencement of eminent domain proceedings or other acquisition procedures by a condemning authority against the Development or any portion thereof, Mortgagees of First Mortgages shall be given timely written notice of such destruction or proceedings.

**Section 8.4     Limitation on Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Association. In the event there is permitted a right of first refusal in favor of any other Person, it shall not be based upon the race, color, religion, sex, sexual preference, marital status, national origin or ancestry of the vendee and it shall not impair the rights of a holder of a First Mortgage:

(a) to foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage;

(b) to accept a deed (or assignment) in lieu of foreclosure in the event of a default by the Mortgagor; or

(c) to sell or lease a Condominium acquired by the Mortgagee, subject to any applicable restrictions imposed upon a Condominium that is designated as an affordable housing unit and subject to the regulations of MOHCD.

**Section 8.5 Priority as to Proceeds and Awards.** Any language contained in this Declaration to the contrary notwithstanding, no Owner and no other party shall have priority over any rights of Mortgagees pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Area.

**Section 8.6 Consent by Mortgagees to Amendments.** Without the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Association and the approval of a majority of the Mortgagees of First Mortgages (unless a higher percentage of voting power of Mortgagees of First Mortgages is specifically required elsewhere in this Declaration), the Association shall not materially and adversely, with respect to such mortgages, amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, Assessment liens or priority of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area;
- (d) Insurance or fidelity bonds;
- (e) Rights to use the Common Area or Exclusive Use Common Area;
- (f) Responsibility for maintenance and repair of the Development;
- (g) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
- (h) Boundaries of any Unit;
- (i) Reallocation of interests in the Common Area or Exclusive Use Common Area;
- (j) Convertibility of Units into Common Area or of Common Area into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium;
- (m) A decision by the Association to establish self management when professional management has been required previously by a Mortgagee of a First Mortgage;
- (n) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(o) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or

(p) Any provisions which are for the express benefit of Mortgagees, insurers or guarantors of First Mortgages.

For purposes of this Section 8.6, implied approval by any Mortgagee of a First Mortgage shall be assumed when such Mortgagee fails to submit a response to any written proposal for additions or amendments to the Governing Documents within sixty (60) days after the Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**Section 8.7 Restrictions on Certain Changes.** Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area by fire or other casualty, unless two-thirds (2/3) of all Mortgagees of First Mortgages (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Association nor the Owners shall be entitled:

(a) By act or omission, to seek to abandon or terminate the Development;

(b) To change the Common Interest or obligations of any Condominium for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area;

(c) To partition or subdivide any Condominium;

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

(e) To use hazard insurance proceeds related to losses of Development property (whether related to Units or Common Area) for other than the repair, replacement or reconstruction of such Development property except as provided by statute in case of substantial loss of the Units or Common Area.

**Section 8.8 Consent to Terminate Legal Status of Development.** Except as provided by statute or any other provision of the Governing Documents, in case of substantial destruction or condemnation of the Development, the consent of Owners of Condominiums holding at least seventy-five percent (75%) of the voting power of the Association and the approval of sixty-seven percent (67%) of Mortgagees of First Mortgages shall be required to terminate the legal status of the Development as a condominium project.

**Section 8.9 Existing Defaults.** A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration existing as of the date of such transfer which is noncurable or of a type which is not practical or feasible to cure.

**Section 8.10 Annual Budget and Financial Statements.** Eligible Mortgagees shall be entitled to receive copies of the annual Association Budget and audited financial statements within the same time period that these items are distributed to Members

**Section 8.11 Voting Rights on Default.** In case of default by any Owner, a First Mortgagee of that Owner may (i) pay any Assessments or take any action reasonably necessary to cure a default by such Owner with the same effect as such cure by the Owner itself and, (ii) upon notice to that Owner and the Association, exercise the voting rights of that Owner.

**Section 8.12 Payment of Taxes and Insurance.** First Mortgagees may, individually or jointly, pay taxes or other charges that are in default and that may or have become a charge against any Unit, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area. First Mortgagees making such payments shall be owed a reimbursement for such expenditures from the Association.

## ARTICLE 9

### INSURANCE, DAMAGE OR CONDEMNATION

Pursuant to this Declaration, the Association is required to procure insurance with respect to the Common Area of the Development for the benefit of the Association and its members (the Unit Owners). In addition, under the Reciprocal Easement Agreement, the Residential Parcel Owner or its successor or assign is designated to procure Joint Insurance on behalf of the Residential Parcel, Commercial Parcel Owner and Garage Parcel Owner, their successors or assigns, with respect to certain Joint Benefit Building Elements and Joint Benefit Systems. The successor to the Residential Parcel Owner is the Association and its members. Under the Reciprocal Easement Agreement, the Joint Advisory Committee advises the Association with respect to the management, operation, repair and restoration of the Joint Benefit Building Elements and Joint Benefit Systems. However, the Joint Advisory Committee is not a legal entity which could receive proceeds. Therefore, the insurance procured by the Association pursuant to the Reciprocal Easement Agreement may be combined into a single or multiple policies, and the costs for such policies shall be apportioned to the Commercial Parcel Owner and Garage Parcel Owner proportionately according to each Parcel Owner's Proportionate Share (as defined in the Reciprocal Easement Agreement). Because Common Area of the Development may not be able to be effectively separated within a policy, the procurement of much of the insurance under the Reciprocal Easement Agreement will also satisfy many but not all of the Association's obligations to procure insurance for the Development hereunder. For example, Fire and Casualty insurance may be one policy because it involves property owned by all of the Parcel Owners, one policy satisfies both insurance obligations hereunder and the Reciprocal Easement Agreement, and the beneficiaries would be the Association and its members and the Commercial Owner and Garage Parcel Owner, with the costs apportioned back to the Association and the Commercial Parcel and Garage Parcel according to each Parcel Owner's Proportionate Share (as defined in the Reciprocal Easement Agreement). However, the Association's obligation to procure directors and officers liability insurance and fidelity bond insurance hereunder would be a separate policy(ies), with the beneficiary being the Association and its members only, shall not be considered Joint Insurance, and the cost of such insurance should not be apportioned back to the Owners of the Commercial Parcel and Garage Parcel. If the Association, as manager for the Residential Parcel, Commercial Parcel and Garage Parcel under the Reciprocal Easement Agreement, procures insurance on behalf of the Commercial Parcel Owner or Garage Parcel Owner, which solely benefits the Commercial Parcel Owner or Garage Parcel Owner, it shall not be considered a joint benefit expense but rather a separate expense of the Commercial Parcel Owner or Garage Parcel Owner, as applicable, paid for by the Association, and the Commercial Parcel Owner or Garage Parcel Owner, as applicable, shall be required pursuant to the Reciprocal Easement Agreement to reimburse the Association for any funds so advanced on its behalf

**Section 9.1 Fire and Casualty; Property Insurance.** The Association shall obtain a master blanket policy or policies of insurance covering all of the Project including improvements now or hereafter erected on the Project and all equipment and fixtures located thereon or used in connection therewith and as more specifically defined as Common Area in this Declaration and Joint Benefit Building Elements and Joint Benefit Systems as defined in the Reciprocal Easement Agreement. The blanket policy or policies of insurance to be obtained by the Association pursuant to the preceding sentence shall insure the (i) Owners, (ii) Association, (iii) Commercial Parcel Owner, (iv) Garage Parcel Owner, (v) Declarant, and (vi) Mortgagees, as their interests may appear, against loss or damage by the perils covered by, and shall provide coverage at least as broad as, a current ISO "special form" policy or its equivalent (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) which may also be extended to include flood and earthquake insurance. Coverage shall be in an amount or amounts equal to full replacement value (i.e., one hundred percent (100%) of replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage and without any deduction for depreciation) with an "agreed amount" endorsement or its equivalent, if available, and an "inflation guard" endorsement. Each such policy required to be maintained hereunder may be subject to a "deductible" or self-insurance amount as the Board deems prudent under the then existing circumstances. Each such policy shall provide for full waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, the Commercial Parcel Owner, the Garage Parcel Owner, Declarant and their respective officers, directors, partners, agents, employees and tenants, if any, and as to all defenses based upon acts of the insureds or the existence of co-insurance (provided, however, that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waivers between the Association, Owners and Parcel Owners set forth herein). The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall be primary and noncontributing with any other property insurance maintained by an Owner or Parcel Owner covering the same loss.

(a) **Endorsements.** The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall also include, without limitation, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) Ordinance or Law, (iii) Replacement Cost, (iv) pollution claims including mold, (v) plate glass, (vi) 30 days of advance notice of cancellation or non-renewal (except for cancellation for non-payment, which shall require 10 days of advance notice) and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(b) **Deductible.** The amount of any deductible shall be paid by the Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board. When a claim is made on the Association's property insurance policy, an Owner is responsible for payment for repair of damage up to the amount of the property insurance policy deductible in the following circumstances: (i) where damage is caused by the fault of the Owner or that Owner's tenant or family members, Invitees or agents, and/or (ii) where damage is caused by the failure of some portion of, or component, in such Owner's Unit which the Owner is responsible maintain and repair. In cases where the damage affects more than one Unit, or a Unit and the Common Area, and subsection 9.1(b)(i) or (ii) above do not apply, each Owner is responsible for the cost to repair the Owner's Unit (and the Common Area immediately abutting or exclusively serving the Owner's Unit) up to the amount of the Association property insurance policy deductible. If the cumulative cost of such repairs exceeds the Association property insurance policy deductible, the amount of the deductible shall be prorated among the claimants based upon the proportion of each claimant's costs for repairs to his or her Unit and the Common Area bears to the total cost of repairs. The Association may levy an Individual Special Assessment against an Owner's Unit as authorized by Section 4.6 for the Owner's share of the Association property insurance policy deductible.

(c) **Scope of Coverage for Condominium Units**. Without limiting the foregoing, with respect to the Condominium Units the Association insurance policy or policies described in this Section 9.1 above shall also include, without limitation, coverage for the following standard fixtures and improvements within the Units (and any equivalent replacements thereof): all built-in or set-in appliances; cabinets; countertops; interior walls, doors and windows; ceiling, floor and wall surface materials and coverings (e.g., paint, wallpaper, mirrors, carpets, tiles and hardwood floors); fixtures (including gas, electrical and plumbing); and heating and air conditioning systems; provided that such coverage shall be in the amount designated by Declarant as the original replacement cost thereof based upon the standard package of such fixtures and improvements offered to all Condominium Unit Owners as part of the original construction of the Units. Reference is made to Section 9.10 of this Declaration for Unit Owners' property insurance obligations with respect to the Units.

**Section 9.2 Boiler and Machinery Insurance.** The Association shall obtain a policy of Boiler and Machinery Insurance, if applicable, for any items listed below which are not covered in or as part of the fire and casualty insurance listed in Section 9.1, insuring the Owners, including the Association, against loss or damage to or because of boilers and other machinery, including but not limited to, all machinery and equipment for heating, ventilating, air conditioning, power generation and similar purposes (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) equal to full replacement value without deduction for depreciation with an "agreed amount" endorsement or its equivalent, if available, and an "inflation guard" endorsement payable to the Association.

The insurance policy to be maintained by the Association pursuant to this Section 9.2 shall also include, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) Ordinance or Law, (iii) Replacement Cost, (iv) Agreed Amount, (v) Consequential Damage, (vi) Hazardous Substances, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

**Section 9.3 Liability Insurance.** The Association shall obtain and maintain a policy or policies of an occurrence version Comprehensive General Public Liability Insurance with combined single limit of Bodily Injury and Property Damage Liability limits not less than Twenty-Five Million Dollars (\$25,000,000) arising out of a single occurrence subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5805(b)(2). The Twenty-Five Million Dollars (\$25,000,000) coverage described in the preceding sentence may be a combination of primary and excess policies. Such policy or policies shall include coverage for bodily injury, emotional distress, wrongful death and/or property damage, and shall name as insured and shall separately protect the Owners, the Association, the Board, Declarant including their respective officers, directors, partners, agents, members, employees (including any manager appointed hereunder) family members, and their successors and assigns (both individually and as a class), any manager, and the Garage Parcel Owner, Commercial Parcel Owner and any condominium owners association for the Commercial Parcel, against any liability to the public or to any Owner (and such Owner's successors, assigns, tenants or lessees) resulting from, arising from, or incident to the ownership, operation, maintenance and use of the Common Area by the Association and the performance of its duties under the Declaration by the Association. Such policy or policies of liability insurance shall be primary and non-contributory with any other liability insurance policy maintained by such insureds covering the same liability.

Such policy or policies of liability insurance to be maintained pursuant to this Section 9.3 shall include the following extensions of coverage, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage: (i) Products/Completed Operations, (ii) Independent Contractors, (iii) Blanket Contractual Liability, (iv) Broad Form Property Damage, (v) Host Liquor Liability, (vi) Non-Owned and Hired Automobile Liability, (vii) Employees as Additional Insureds, (viii) Personal Injury Liability (Libel, Slander, False Arrest and Wrongful Eviction) with the "Employee Exclusion" deleted, (ix) Cross Liability Endorsement, (x) Severability of Interest, (xi) Hostile Fire Amendment to the Pollution Exclusion, and (xii) Terrorism (subject to determination by the Board that such Terrorism coverage is desirable and available at reasonable rates).

The Association may purchase and maintain a policy or policies of excess or umbrella liability to afford protection over and above the underlying Commercial General Liability, Automobile Non-Ownership and Hired Car Liability, Employers Liability, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage. In the event such policy or policies of excess or umbrella insurance coverage is obtained, the Board shall determine a reasonable amount of excess or umbrella liability insurance to protect the interests of the Development.

Any tort cause of action against any Owner arising solely by reason of an ownership interest as a tenant in common of the Common Area shall be brought only against the Association, pursuant to Section 5805 of the Civil Code, and not against any such Owner, if the Association maintained and has in effect for the tort cause of action, one or more policies of insurance including coverage for general liability of the Association, and the coverage is in the minimum amount of Three Million Dollars (\$3,000,000). In no event shall such liability insurance coverage be less than the statutory minimum requirements for Association liability insurance described in Civil Code Section 5805. Reference is made to Civil Code Section 5805 for further detail regarding statutory minimum requirements for Association liability insurance.

**Section 9.4     Board Members and Officers Liability.** The Association shall maintain a policy or policies insuring the Owners, individually and collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any director or any officer of the Association while acting in their capacity as such in the amount of at least Three Million Dollars (\$3,000,000) for each occurrence, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5800(a)(4). Such limits are to be reviewed by the Board not less frequently than annually. Said policy or policies shall provide for a full waiver or subrogation against the insureds, a full waiver of all defenses based upon acts of insureds and shall further provide that said policy or policies cannot be canceled or modified without at least thirty (30) days of advance notice to the Association of cancellation or non-renewal (except for cancellation for non-payment, which shall require ten (10) days of advance notice). Reference is made to Civil Code Section 5800 for further detail regarding statutory minimum requirements for Association officers and directors liability insurance.

Coverage described in this Section 9.4 may include one or more of the following extensions: (i) Severability of Interest, (ii) Employment Practices Liability, (iii) Outside Directorship Liability, (iv) Coverage for Failure to Maintain Insurance, (v) Full Prior Acts, (vi) Extended Reporting Period, and (vii) 90 day advance notice of cancellation or non-renewal, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such extensions of coverage.

**Section 9.5     Fidelity Bond or Insurance.** The Association shall maintain, or be covered by, a fidelity bond or policy of insurance against dishonest acts on the part of any Persons entrusted with or permitted to handle funds belonging to or administered by the Association including the professional manager and his employees. Such fidelity bond or policy of insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is not less than the sum of three (3) months' Assessments on all Condominiums in the Development plus the Association's reserves. An appropriate endorsement shall be added to such policy or bond, if necessary, to cover any Persons who serve without compensation, including directors, if such policy or bond would not otherwise cover the acts of volunteers.

**Section 9.6     Workers' Compensation Insurance.** The Association shall obtain Workers' Compensation Insurance to the extent required to comply with any applicable law.

**Section 9.7     Earthquake Insurance.** The Association shall obtain earthquake insurance only if a majority of the Owners vote to purchase such insurance. If the Owners elect to purchase such earthquake insurance, the insurance may be subsequently cancelled on a vote of the majority of the Owners. If cancelled, the Association shall make reasonable efforts to notify the Owners of the cancellation.

**Section 9.8     Insurance Required by Certain Lenders.** Notwithstanding Sections 9.1 through 9.6 or any other provision of this Declaration, in the event the casualty insurance, boiler and machinery insurance, liability insurance and fidelity bond requirements established for condominium projects by FNMA or FHLMC are greater than the insurance and fidelity bond requirements specified in this Declaration, the FNMA and FHLMC requirements, whichever are greater, shall govern and such insurance or fidelity bond shall be maintained by the Association. This requirement as to FNMA or FHLMC shall be effective so long as FNMA or FHLMC is a Mortgagee, Insurer or Guarantor of a Mortgage or an Owner of a Condominium within the Development; provided, however, to the extent such coverage is not available or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

**Section 9.9     General Policy Provisions; Notice to Owners; Board Authority to Revise Insurance Coverage; Insurance Trustee.**

(a) Each of the policies of insurance obtained by the Association pursuant to this Article 9 shall include as named insureds the Association, as trustee for the Owners, the Association's directors and officers, Declarant, and the Owners and their family members, as well as the Garage Parcel Owner and Commercial Parcel Owner and any condominium owners association in the Commercial Parcel, and shall provide that the insurers may not cancel, change or refuse to renew the policies without first giving thirty (30) days' prior written notice to the Association, the Owners and the Mortgagees, except for cancellation for nonpayment of insurance premiums, which shall require ten (10) day's prior written notice to the Association, the Owners and the Mortgagees. Each such policy shall also provide that coverage shall not be prejudiced by any act or neglect of any Condominium Owner except to the extent such prejudice is unavoidably imposed by law or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control. Each such policy shall contain both a full waiver of subrogation by the insurer as to any and all claims against the Association, Declarant and any Owners, Garage Parcel Owner and Commercial Parcel Owner and any condominium owners association in the Commercial Parcel, Mortgagees, and their respective partners, directors, officers, family members, agents, employees and tenants and a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured except to the extent such invalidity is unavoidably imposed by law. Each such policy shall also provide that the

coverage provided with respect to any claim shall not be adjusted based on contribution related to insurance policies purchased by any Owner or its Mortgagee, or any Parcel Owner or its Mortgagee.

(b) All such policies of insurance and bonds shall be obtained from insurance companies with both a financial rating of Class VII or better and a policyholder's rating of A- or better by Best's insurance rating guide. In the event Best's should revise its rating system, the Association shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by Best's or, in the event Best's discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Board may select.

(c) The Association shall provide the Owners with a summary of the Association's property, liability, earthquake, flood, and fidelity insurance policies, as required by Civil Code Sections 5300 and 5810, thirty (30) to ninety (90) days before the end of the Association's fiscal year.

(d) Subject to Section 9.8 and any statutory insurance requirements, the Board shall have the authority to deviate from the insurance requirements for the Owners and the Association set forth in this Article IX in any manner that the Board, in its discretion, considers to be in the best interests of the Association, subject to any insurance requirements in the Reciprocal Easement Agreement. If the Board elects to materially reduce the insurance coverage from the coverage required in this Article IX, the Board shall make reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction in coverage. The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is no longer to obtain one or more of the required insurance coverages to the extent the insurance is no longer available, or if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

(e) The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year, and make such adjustments to the policies as the Board considers to be in the best interests of the Association. The Board shall have the right to vary from the insurance required by this Declaration in the Board's reasonable discretion, which may include, without limitation, obtaining additional insurance policies or coverages, in higher amounts and/or policy limits.

(f) Subject to the rights of Mortgagees, the proceeds from the Association property insurance polic(ies) shall be payable to the Association or an insurance trustee to be held and expended for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. Such trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust.

(g) Subject to approval by the Board, any of the insurance coverage required by this Article 9 may be combined with the insurance coverage and any insurance policy or policies described in the Reciprocal Easement Agreement. Any insurance policies required by this Declaration may be combined with any insurance policies required by the Reciprocal Easement Agreement into a single policy or multiple policies, as determined by the Board.

#### **Section 9.10 Residential Unit Owner's Liability, Property, and Automobile Insurance.**

(a) **Liability Insurance.** Each Unit Owner shall, at such Owner's sole cost and expense, maintain a general liability insurance policy insuring the Unit Owner against liability for injury

to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Unit by such Unit Owner or such Owner's tenant, or their family members, employees, agents, guests or Invitees. Such policy shall have limits of liability of not less than One Hundred Thousand Dollars (\$100,000) per occurrence and Two Hundred Thousand Dollars (\$200,000) general aggregate.

(b) **Property Insurance.** Each Unit Owner shall maintain its own policy or policies of property insurance providing coverage against losses to personal property located within the Owner's Unit and providing coverage for all upgrades or additions to the fixtures and improvements installed in the Units by Declarant at the time of original construction of the Unit, but only to the extent that the replacement cost of any such upgrades or additions exceeds the amount of coverage provided by the Association's insurance described in Section 9.1 of this Declaration as determined on the date that immediately precedes the date of the damage or destruction of the upgrades, additions, fixtures or improvements in such Owner's Unit.

(c) **Automobile Insurance.** Each Owner or Occupant that parks in the Development shall, at its sole cost and expense, maintain an automobile insurance policy insuring against damage to all vehicles owned or operated by such Owner as well as liability for bodily injury and property damage caused to others arising from such operation, including coverage for owned, hired and non-owned automobiles, with liability limits of not less than the minimum amount required by law for each accident for bodily injury and personal property damage combined. The Association shall have no liability for any loss or damage caused by the Association, the Garage Parcel Owner or any parking garage operator or its agents to any vehicle located upon or around the Project.

(d) Any insurance maintained by an Owner shall not (i) separately insure any property covered by the Association's insurance policy or policies described in this Article 9 or described in the Reciprocal Easement Agreement, or (ii) invalidate any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable to the Association under the Association's policies that results from the existence of such Owner's insurance policy will be chargeable to the Owner who acquired such Owner's insurance policy. The Association may levy an Individual Special Assessment against the Owner's Condominium to collect the amount of the diminution.

(e) Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners (and occupants), the Garage Parcel Owner, Commercial Parcel Owner and any owners association for the Commercial Parcel, the Association, and any First Mortgagee of the Owner's Unit. The Board has no obligation to monitor or enforce any Unit Owner's compliance with this section.

(f) Each Owner should seek the advice of a qualified insurance consultant regarding personal liability insurance coverage and property insurance coverage appropriate for the Owner, the Owner's personal property and the Owner's Unit, and to ensure compliance with the provisions of this Section 9.10. Such insurance would typically be in the form of a condominium unit owner's policy known as an "HO-6" policy, but may be another form of policy. Each Owner should consult with a qualified insurance consultant regarding the availability of other insurance coverages, endorsements or riders that may be appropriate for the Owner and the Owner's Unit in order to provide desired coverage, including, without limitation (i) all risk endorsement, (ii) loss assessment coverage, (iii) living expense endorsement, (iv) rental coverage endorsement (if applicable), and (v) coverage for the Association master policy deductible.

(g) The Association shall have the authority to enforce the Unit Owners' insurance obligations described in this Section 9.10 and require that each Owner maintain all of the required insurance coverages. Notwithstanding the foregoing, the Association and its directors, officers and agents have no duty or obligation to monitor, verify or enforce any Owner's compliance with this Section 9.10.

(h) Copies of all insurance policies that an Owner is required to maintain pursuant to this Declaration, or a certificate of such insurance, shall be delivered to the Association upon request. The acceptance of a certificate of insurance by the Association shall not constitute a waiver of any insurance requirements set forth herein.

(i) Reference is made to the Reciprocal Easement Agreement for additional insurance requirements that apply to the Residential Unit Owners.

**Section 9.11 Payment of Premiums.** Insurance premiums for the policies required hereby shall be a Common Expense to be included in the monthly Assessment levied by the Association. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Association to be used solely for the payment of the premiums for such policies.

**Section 9.12 Material Damage or Destruction.** If any portion of the Development is Materially Damaged or destroyed by fire or other casualty, then, subject to the provisions of the Reciprocal Easement Agreement concerning casualty, the following events shall occur:

(a) A special Unit Owners meeting shall be held within sixty (60) days of the date of the material damage or destruction. Said Unit Owners meeting shall be called by the Board, the president or any two (2) Unit Owners if the meeting has not been called within fifteen (15) days of the damage or destruction and the Secretary shall give thirty (30) days written notice of the meeting to each Unit Owner and his Mortgagees of record, and notice of said meeting shall be delivered to Declarant. Said Unit Owners meeting shall be held at a suitable location on the Development or as close thereto as practicable which location shall be specified in such notice; Declarant shall be entitled to attend said Unit Owners meeting. A special meeting of the Joint Advisory Committee shall also be held. Subject to the provisions of Section 8.7 hereof and the rights of Mortgagees thereunder, the Commercial Parcel Owner and Garage Parcel Owner have designated the Residential Parcel Owner in the Reciprocal Easement Agreement to rebuild the entire Project and charge back the Commercial Parcel Owner and Garage Parcel Owner for actual costs related to construction of the Commercial Parcel and Garage Parcel, respectively.

(b) The Association shall oversee the repair or reconstruction of the Development in substantial accordance with the latest available construction plans and specifications as hereinafter provided unless in such special Unit Owners meeting at least three-quarters (3/4) of the total voting power of Class A and Class B casts votes against such repair or reconstruction in which event the provisions of Section 9.13 shall immediately become applicable.

(c) Unless, in the manner provided above, the requisite number of votes are cast against such repair or reconstruction, all of the insurance proceeds payable on account of such damage or destruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Board. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository and which shall be reasonably acceptable to the Board. The restoration or reconstruction shall be substantially in accordance with the latest available construction plans and specifications for the Project modified as may be required by available materials, state of the art construction and applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by a majority of all Owners; provided, however, any Owner's

requested modification to the latest available construction plans and specifications of his Unit shall be approved unless (i) the cost of construction pursuant to the modification exceeds the cost of reconstruction according to the latest available construction plans and specifications, (ii) it affects the Common Area, or (iii) it affects the square footage of, permitted use of, utility service to, easements in favor of or number of Units.

(d) The Board shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor") and architect (the "Architect") for the repair or reconstruction contemplated by this Section.

(e) The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository upon the receipt of appropriate mechanics lien releases and upon the certification of the Construction Consultant, the General Contractor and the Architect dated not more than ten (10) days prior to any such request for disbursement setting forth the following:

(1) That 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;

(2) That such 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 is 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 for the work, giving a brief description of such services and materials and the principal categories thereof, the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That 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;

(4) That no part of the cost of the services and materials described in Section 9.12(e)(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

(f) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, the Association shall first use sums from its accounts and, if necessary, shall levy a Special Assessment on all of the Owners in accordance with Section 4.5 to restore or rebuild the Development.

(g) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, and the sums from the Association's accounts are insufficient to make up the deficiency, and a Special Assessment levied on the Owners in accordance with Section 4.5 is insufficient to make up the deficiency, then the Board may, without approval by the Owners, supplement the insurance proceeds and other funds by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

(h) All such funds to be supplied by the Association shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section.

**Section 9.13 Owners Vote Not to Rebuild.** Subject to the provisions of Section 8.7 hereof and the rights of Mortgagees thereunder, in the event (a) the Unit Owners vote not to rebuild as described in Section 9.12(b) above, and (b) the Commercial Parcel Owner and Garage Parcel Owner have agreed to same under the terms of the Reciprocal Easement Agreement, the Association shall, acting as attorney-in-fact for all the Unit Owners and the Commercial Parcel Owner and Garage Parcel Owner under the Reciprocal Easement Agreement, sell the remaining property on terms satisfactory to the Board. Because of the mandatory cross-support required in this airspace parcel Project, and the proportionately small ownership interest of the Commercial Parcel and Garage Parcel in the Project, the Reciprocal Easement Agreement provides that the Residential, Commercial Parcel Owner and Garage Parcel Owner must act together regarding the rebuilding or sale after damage or destruction. The net proceeds of the sale, as allocated to the Residential Parcel Owner under the Reciprocal Easement Agreement, together with the insurance proceeds, accrued reserves, interest and other funds, shall thereupon be distributed to the Unit Owners according to the following procedure: the Board shall retain, at the Association's expense, an appraiser who is a member of the American Institute of Appraisers or other nationally recognized appraiser's organization who shall determine the fair market value of each Unit as it existed immediately prior to the damage or destruction and whose determination of value shall be final. The Board shall then distribute to each Unit Owner and his Mortgagees the following amounts: (a) that percentage of insurance and net sale proceeds equal to such Unit Owner's Unit's fair market value immediately prior to the damage or destruction divided by the total fair market value of all the Units immediately prior to such damage or destruction; and (b) that percentage of accrued reserves, interest and other funds equal to the Annual Assessment against such Unit Owner's Unit divided by the total Annual Assessments against all Units, each as of the most recent Annual Assessment immediately prior to such damage or destruction. The distribution to the Commercial Parcel Owner and Garage Parcel Owner shall occur in accordance with the terms of the Reciprocal Easement Agreement.

**Section 9.14 Damage or Destruction Not Considered Material.** In the event that any portion of the Development is not Materially Damaged as a result of fire or other casualty the Development shall be repaired and reconstructed (after the holding of a special Owners meeting in which a Special Assessment is approved unless exempted by Section 9.12) in accordance with the provisions for repair and reconstruction as set forth in Section 9.12 hereinabove. Under the Reciprocal Easement Agreement, the Commercial Parcel Owner and Garage Parcel Owner shall be required to repair and reconstruct their Parcel improvements to guarantee the cross-support required therein.

**Section 9.15 Substantially Full Insurance Settlement.** Notwithstanding any provision of Section 9.13 to the contrary, if the insurance carrier offers ninety-five percent (95%) or more of the full amount required to repair and restore all the damage, then the Board shall, without a vote of Members, contract to repair or rebuild the damaged portions of the Development in the manner provided in Section 9.12 hereinabove, so long as the deficiency in required funds for repair and restoration is covered by Special Assessments or the Board borrowing on behalf of the Association as described in Section 9.12 above. Under the Reciprocal Easement Agreement, the Commercial Parcel Owner and Garage Parcel Owner shall be required to repair and reconstruct their Parcel improvements to guarantee the cross-support required therein.

**Section 9.16 Emergency Repairs.** In the event of a casualty, there may be a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulations pending settlement of insurance claims and prior to procuring bids for performance of restoration work. As such, without waiting to obtain insurance settlement or bids, the Board may undertake such emergency repair work after

a casualty as it may deem necessary or desirable under the circumstances and the Board may charge the Association's operating accounts for the costs thereof.

**Section 9.17 Notice of Casualty.** Within (60) days after any damage or destruction occurs which invokes the provisions of Sections 9.12 through 9.16, the manager or the Board or, if they do not, any Owner, the insurer, the insurance trustee or any Mortgagee of any such Owner shall record a sworn declaration which shall state that such damage has occurred, shall describe such damage, shall name any insurer against whom claim is or may be made, shall name each insurance trustee and shall state that such sworn declaration is recorded pursuant to this Section of this Declaration and that a copy of such declaration has been served on each Owner pursuant to the provisions of this Declaration.

**Section 9.18 Condemnation.** In the event of any taking of any Unit, or a part thereof, by eminent domain, the Owner of such Unit shall be entitled to receive the award of such taking after all mortgages and liens on the Unit have been satisfied or otherwise discharged. After acceptance thereof and if such Owner shall vacate the Unit as a result of such taking, the Owner and his Mortgagees shall be divested of all interest in the Development.

In the event of a taking by eminent domain of the Common Area or more than one Unit, or any parts thereof, at the same time, the Association shall represent the affected Owners in the negotiations and shall propose the method of division of the proceeds of condemnation where the compensation is not apportioned among the affected Owners and their respective Mortgagees by a court judgment or by agreement between the condemning authority and each of the affected Owners. Such compensation available to the affected Owners shall be distributed among the affected Owners and their respective Mortgagees, as their interest may appear, according to the relative fair market value of the Condominiums affected by the condemnation as determined by an independent appraisal conducted by an appraiser who is a member of the American Institute of Appraisers or other nationally-recognized appraiser's organization and whose appraisal shall be final. Said appraiser shall be retained by the Board and paid by the Association.

Upon the taking of any Unit(s) which constitutes less than a total taking of all Units, the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Map (if necessary) and this Declaration to eliminate from the Development the Units so taken and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Units in the Development and all Owners of the remaining Units shall convey to each remaining Owner an equal proportionate share of the undivided interests in the Common Area.

## ARTICLE 10

### **DISPUTE RESOLUTION PROVISIONS**

#### **Section 10.1 Enforcement of CC&Rs and Dispute Resolution.**

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration together with any amendments hereto or to the Articles, Bylaws or other Governing Document(s) and in such action shall be entitled to recover damages and/or injunctive relief as well as reasonable attorneys fees as may be ordered by the Court. The Association shall have the exclusive right of enforcement of provisions of the Governing Documents relating to architectural control and the Association Rules, unless the Association is unwilling or unable to cause such enforcement, in which case any Owner who otherwise has standing shall have the right,

after notice to the Association, to undertake such enforcement. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Board may perform any act reasonably necessary to resolve any civil claim or action through alternate dispute resolution proceedings such as conciliation, mediation, binding arbitration, or non-binding arbitration.

(c) Any arbitration pursuant to Sections 10.1 or 10.2 will be conducted in accordance with the following rules and procedures:

(1) If the Declarant is a party, the Declarant shall advance the fees necessary to initiate the arbitration, with the costs and fees, including ongoing costs and fees to be paid as agreed by the parties and if they cannot agree as determined by the arbitrator(s) with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s).

(2) The arbitration shall be administered by a neutral and impartial person(s).

(3) A neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), and the arbitrator(s) to be appointed within a specified period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124 of the Code of Civil Procedure.

(4) Venue of the arbitration shall be in the county where the subdivision is located unless the parties agree to some other location.

(5) The arbitration shall be promptly and timely commenced in accordance with (i) the rules of the arbitration, or if the rules don't specify a date by which the arbitration must commence, then (ii) a date as agreed to by the parties, and if they cannot agree, (iii) a date determined by the arbitrator(s).

(6) The arbitration shall be conducted in accordance with the rules and procedures of the Streamlined or Comprehensive Rules and Regulations of JAMS.

(7) The arbitration shall be prompt and timely concluded.

(8) The arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause.

**Section 10.2 Pre-Litigation Requirements; Claims for Declaratory Relief or Enforcement of Governing Documents.** Prior to initiating the prosecution of a civil action by the Association against any Owner(s) or by an Owner against the Association or any other Owner(s), the parties shall be subject to the following requirements in subsections (a) and (b) below.

(a) With respect to any internal dispute between the Association and an Owner involving their rights, duties, or liabilities under the Davis Stirling Act, under the Nonprofit Mutual Benefit Corporation Law, or under this Declaration or the Condominium Documents, the Board shall develop fair, reasonable, and expeditious dispute resolution procedures in accordance with the

requirements of Civil Code Sections 5900-5920 (or defer to the default procedures in Section 5915). The parties to such a dispute shall comply with the meet and confer requirements set forth in Sections 5900-5920 of the Civil Code, including any procedures developed by the Association as described above. The dispute resolution procedures described Civil Code Sections 5900-5920 are intended to provide a simple and efficient intra-association dispute resolution method, and shall be undertaken in good faith by the parties to any such dispute.

(b) With respect to an action solely for declaratory, injunctive or writ relief to enforce the Condominium Documents, the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or for declaratory relief or injunctive relief to enforce the same in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board or the Unit Owner, as applicable shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 5930 of the Civil Code. This obligation shall not apply to actions in small claims court.

(c) As required by Civil Code Section 5965, Unit Owners shall annually be provided with a summary of the provisions of Sections 5925-5960 of the Civil Code, which shall specifically reference Section 5930, and shall include the following language:

“Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the governing documents or the applicable law.”

The summary shall be provided either at the time the pro forma budget is prepared and distributed pursuant Section 5310. The summary shall include a description of the Association internal dispute resolution process, as required by Section 5920 of the Civil Code.

### **Section 10.3 Required Actions Prior to Certain Legal Actions or Proceedings.**

(a) Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Section 10.3, the Board shall not cause nor permit the Association to institute any significant legal action or proceeding, including any mediation, arbitration or judicial reference proceeding, against Declarant or any person without providing the Owners with at least thirty (30) days' prior written notice of the Association's intention to institute such legal action or proceeding, including any "Calderon Notice" or any other notice intended to notify Declarant of a potential claim or legal proceeding. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or annual assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is being prosecuted. For purposes of this Section 10.3, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

(1) The levy of a special assessment to fund all or any portion of the action or proceeding;

(2) The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;

(3) The amount of the claim is in excess of twenty-five thousand dollars (\$25,000); or

(4) A material adverse effect on the ability to sell and/or refinance the Condominiums within the Development during the period the action or proceeding is being prosecuted.

Notwithstanding subsection (a) above, if the Board in good faith determines that there is insufficient time to provide prior notice to the Owners as required in this Section 10.3 before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required in this provision.

(b) Pursuant to Civil Code Section 6150, not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damages to the Units that arise out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the membership records when the notice is provided. This notice shall specify the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of the meeting.

Notwithstanding subsection (b) above, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Board may give the notice, as described above, within thirty (30) days after the filing of the action.

(c) Notwithstanding anything to the contrary in this Declaration, the Board shall not cause nor permit the Association to institute any significant legal proceeding, including without limitation any civil action, mediation, arbitration, or judicial reference proceeding against Declarant without first obtaining the affirmative vote of Members representing no less than seventy-five percent (75%) of the total voting power of all of the Members of the Association, excluding Declarant; provided that the vote of the Members is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws related 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. Notwithstanding the foregoing, the reference to any procedures in this Section 10.3 shall not provide the Owners or the Association with any rights or remedies not otherwise available to them.

**Section 10.4 Title 7 Master Declaration; Disputes Involving Declarant; Design or Construction Defect Claims.**

(a) **Title 7 Master Declaration.** Disputes covered by the Title 7 Master Declaration shall be resolved in accordance with the terms, conditions and procedures set forth in the Title 7 Master Declaration.

(b) **Disputes Involving Declarant.** Notwithstanding any other provision in this Declaration, but except as may otherwise be provided in the Title 7 Master Declaration, any disputes, claims, issues or controversies between any Owner and Declarant or between the Association and Declarant regarding any matters that arise from or are in any way related to the Development, the relationship between an Owner and Declarant or the relationship between the Association and Declarant, whether contractual or tort, including but not limited to the purchase, sale, condition, design, construction, installation or materials used in the construction of any Unit or any portion of the Development, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, shall be resolved in accordance with the terms, conditions and procedures set forth in the Title 7 Master Declaration.

(c) **Design or Construction Defect Claims.** Any action or legal proceeding by the Association or any Owner against Declarant, or against any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant, for the design and/or construction of the Development, or any element thereof, which action or legal proceeding pertains to any dispute, claim, issue or controversy (each, a "Dispute") relating to or based upon a claim for defects or negligence in the design or construction of improvements within the Development, shall be resolved according to the dispute resolution procedures contained in the Title 7 Master Declaration referenced in Section 1.1 of this Declaration. Notwithstanding anything in this Declaration or in the Title 7 Master Declaration to the contrary, in order to facilitate the resolution of any such Dispute in the best interests of the Association, at least one member of the Board with the authority to settle the Dispute shall be required to be in attendance at all times and shall have the obligation to participate in any meeting, conference, proceeding, hearing or other similar situation in which settlement discussions may occur concerning a "Dispute" described above.

(d) The provisions of this Section 10.4 are in addition to, and not in place of, the requirements of Section 10.3. Further, for actions and legal proceedings subject to this Section 10.4, any and all notices under Section 10.3 shall also include a list of any and all defect and design claims being brought and an estimate of repair costs. The provisions of this Section 10.4 shall not be amended without the prior written consent of Declarant.

**Section 10.5 Notice of Right to Repair Law; Title 7.** The Association and Owners are hereby advised of the existence of the procedures codified at Title 7 of Part 2 of Division 2 of the California Civil Code (Section 895 et seq.)(the "Right to Repair Law"), which became effective on January 1, 2003. These procedures impact the legal rights of the Owners and the Association with respect to design and construction defect disputes and related claims involving Declarant.

**Section 10.6 Subsequent Purchasers.** Pursuant to Civil Code Section 912(h), each Owner is hereby notified that each Owner is obligated to provide any subsequent purchasers of that Owner's Unit with copies of documents provided by Declarant to that Owner before the Close of Escrow of that Owner's Unit. These documents include, but are not limited to, (i) the Title 7 Master Declaration, (ii) any manufacturer's warranty information, (iii) any homeowner guide or applicable maintenance manual, (iv) any disclosures and supplemental disclosures, and (v) any other documents provided in conjunction with the original sale of the Condominium Unit by the Declarant. Each Owner shall maintain full and complete copies of all of the documents described above, and shall provide copies of said documents to any subsequent purchasers of Buyer's Unit. In accepting title to a Unit, subsequent purchasers are bound, and deemed to have agreed to be bound, by any and all such documents. Each Owner is obligated to provide to Declarant promptly at the time of the sale with the names of any subsequent purchaser of the Unit from Buyer for a period of ten years from the date of the original close of escrow for such Owner's Unit.

## ARTICLE 11

### GENERAL PROVISIONS

**Section 11.1 Severability.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Development is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**Section 11.2 Term.** The covenants and restrictions of this Declaration shall run with and bind the Development and shall inure to the benefit of and shall be enforceable by the Association or any Owner and their respective legal representatives, heirs, successors and assigns for a term of sixty (60) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of the voting power of the Association elects otherwise.

### **Section 11.3 Amendments.**

#### **(a) Amendment by Declarant.**

**(i)** Notwithstanding any other provisions of this Section 11.3, at any time prior to the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

**(ii)** Notwithstanding any other provisions of this Section 11.3, Declarant (for so long as Declarant owns any portion of the Development) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of the Bureau of Real Estate or VA, FHA, Fannie Mae, Ginnie Mae, Freddie Mac, or other lender; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Development that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under Division 2, Part 2, Title 7 of the California Civil Code (Section 895 et seq.); and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

**(iii)** Declarant shall have the right to amend the Map and Condominium Plan to reflect as-built conditions and/or to correct typographical, engineering or other errors in any previously recorded Condominium Plan, and such amendment, notwithstanding the provisions of Civil Code Section 4295, shall not require the consent of any Owner or Mortgagee.

**(b)** After the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, and during such time as there is both Class A and Class B voting membership in the Association, this Declaration may be amended only by the vote or written consent of at least two-thirds (2/3) of the voting power of each of Class A Members and Class B Members and an appropriate percentage of Mortgagees of First Mortgages, if applicable. After the conversion of Class B memberships into Class A memberships as provided in Section 3.6, this Declaration may be amended only by the vote or written consent of at least two-thirds (2/3) of the voting

power of the voting Members of the Association as well as the vote or written consent of a majority of the total voting power of the voting Members other than Declarant and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration if approval of First Mortgagees is required pursuant to Article 8.

(c) Except for an amendment that may be unilaterally completed by Declarant as provided in Section 11.3(a): (i) a proposed amendment shall be distributed to all Unit Owners by first-class mail, personal delivery, electronic delivery (when agreed to in advance) or as otherwise permitted by Civil Code Sections 4040 through 4055 (as applicable), not less than thirty (30) days prior to the deadline for voting on the amendment by the Members of the Association, (ii) any such amendment shall be evidenced by an instrument executed and acknowledged by the President, Secretary or other duly authorized officer of the Association, shall make appropriate reference to this Declaration and its amendments and shall be recorded in the Official Records of the Recorder of the City and County of San Francisco, and (iii) any such voting of the Unit Owners regarding amendment of this Declaration shall comply with the applicable procedures in Civil Code Sections 5100-5130.

(d) A copy of an amendment adopted by the Members of the Association or completed by Declarant shall be delivered to the Unit Owners by first-class mail or personal delivery, or electronic delivery when agreed to in advance, within a reasonable period after its recordation.

(e) Notwithstanding the above in this Section 11.3(b): (i) the percentage of the voting power of the voting Members of the Association or of voting Members other than Declarant necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under such clause or provision, (ii) the Board shall have the power to amend this Declaration without an Association vote if the amendment is technical in nature or to make necessary factual corrections or changes required by law, (iii) any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not any other Owner shall not be amended or rescinded without the prior written consent of Declarant until all of the Condominiums in the Development have been conveyed to an Owner pursuant to a Public Report and Declarant no longer owns any Condominiums in the Development, and (iv) the provisions of Section 10.3 (Required Actions Prior to Certain Legal Actions or Proceedings), Section 10.4 (Title 7 Master Declaration; Disputes Involving Declarant; Design or Construction Defect Claims) and Section 11.4 (Limitation of Restrictions on Declarant; Development Rights; Title Rights) shall not be amended without the prior written approval of Declarant.

(f) **Amendment of the Condominium Plan.** Notwithstanding that easement(s) or access areas related to the Commercial Parcel or Garage Parcel may be shown or described on the Condominium Plan for the Residential Parcel, the Condominium Plan for the Residential Parcel applies only to the Residential Parcel and therefore may be amended without the consent of the Owner of the Commercial Parcel (or the Owner of any Commercial Unit located in the Commercial Parcel) or the Owner of the Garage Parcel, so long as any easements or other rights in favor of the Commercial Parcel or Garage Parcel shown or described on the Condominium Plan are not affected in a materially adverse manner.

**Section 11.4 Limitations of Restrictions on Declarant; Development Rights; Title Rights.** Declarant is or may be undertaking the work of developing Condominiums and other improvements within the Development and Project, which work may include work on existing building(s) and appurtenances within the Development and Project. The completion of that work and the marketing, sale, rental or other disposal of the Condominiums is essential to the establishment and welfare of the Development as a condominium community. In order that said work may be accomplished and the Development be established as a fully occupied condominium community as rapidly as possible, and for a

period of time terminating upon sale and close of escrow of the final Condominium Unit in the Development and Property owned by Declarant, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or Declarant's contractors or subcontractors from performing on the Development or in any Unit whatever is reasonably necessary or advisable in connection with the completion of said work, including, without limitation, causing noise, dirt dust, odors, smells or other disturbances; in connection with any work, construction on any portion of the Project or Development.

(b) Prevent Declarant or Declarant's contractors or subcontractors from using the driveways or entranceways from public street, sidewalk, pathway, corridor or walkway in the Development to any portion of the Project or any building in connection with the completion of any work on the Project.

(c) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Development such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing said Development and Project as a community and disposing of the Condominiums by sale, lease or otherwise.

(d) Prevent Declarant from conducting on any part of the Development its business of completing said work and of establishing a plan of condominium ownership and of disposing of said Development and Project by sale or leasing of Condominiums or otherwise, including use of a Unit, multiple Units or portion of the Common Area as a sales or leasing office or other buyer or resident service purpose.

(e) Prevent Declarant from sales and marketing activities as may be deemed necessary by Declarant for the marketing of the Condominiums for sale or leasing.

(f) Prevent Declarant from maintaining such sign or signs on any part of the Development as may be necessary for the sales, marketing, leasing, or disposition of the Development and Project by sale or leasing of Condominiums or otherwise.

(g) Subject Declarant to the Architectural Control provisions of this Declaration for the construction of any Condominium or other improvement on the Development.

(h) Prevent Declarant and Declarant's successors and assigns from using the Common Area and/or a Unit(s) for a model Unit, design center, customer service center or display and sales office which promotes the Development and Project until the last unit is sold.

(i) Subject to the foregoing, so long as Declarant or Declarant's successors and assigns owns one or more of the Condominiums established and described herein, Declarant and its successors and assigns shall otherwise be subject to the provisions of this Declaration. The provisions of this Section 11.4 may not be amended without the consent of Declarant until three (3) years after all of the Condominiums in the Development and Project owned by Declarant have been conveyed to an unrelated third party.

(j) **Title Rights.** The rights of Declarant may be assigned to any successor(s) by an express assignment in a recorded instrument, including, without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations, easements and rights of way to itself, utility companies, to

government agencies, or to others as may be reasonably necessary to the proper development, marketing, sale, leasing and disposal of property owned by Declarant.

(k) **Supplementary Declaration.** So long as Declarant owns any portion of the Property, a Supplementary Declaration may be recorded by Declarant without the consent of the Association or any Owner, for any of the purposes for which a Supplementary Declaration may be recorded as provided herein this Declaration.

**Section 11.5 Termination of any Responsibility of Declarant.** In the event Declarant conveys its rights, title and interest in and to the Development to any individual, partnership or corporation and causes a "Notice of Substitution of Declarant" setting forth the name and business address of such individual, partnership or corporation and a reference to this Declaration to be recorded in the Official Records of the City and County of San Francisco, Declarant shall be relieved of any further duty or obligation hereunder and such individual, partnership or corporation shall accept all such duties and obligations of Declarant and shall be entitled to exercise the rights available to Declarant hereunder.

**Section 11.6 Enforcement of Obligation to Complete Improvements.** In the event that the Common Area of the Development has not been completed prior to the issuance of a final subdivision public report by the BRE, then Declarant shall enter into written agreements satisfactory to the BRE to secure the completion of such improvements. The Board shall consider and vote upon action by the Association to enforce the rights provided to the Association by such agreements if, within sixty (60) days after the completion date specified for a particular improvement by such agreement, no notice of completion as to such improvement has been filed and such improvement is not complete. If the Association has given an extension in writing for the completion of any Common Area, the Board shall consider and vote upon action if a notice of completion has not been filed within thirty (30) days after the expiration of such extension.

A special meeting of the Members of the Association, for the purpose of voting to override a decision by the Board not to initiate action to enforce the rights of the Association under the aforementioned agreements or on the failure of the Board to consider and vote upon action, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after the receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of voting Members of the Association. At such special meeting, a vote of a majority of the Members of the Association other than the Declarant shall be required to take action to enforce the rights of the Association under such agreements and such vote shall be deemed to be the decision of the Association. The Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

**Section 11.7 Inspection of Improvements and Release of Completion Arrangements.** The Board shall, within thirty (30) days of Declarant's providing the Board with a copy of the recorded notice of completion with respect to the improvements referred to in Section 11.6 above or otherwise notifying the Board that the improvements are complete, cause such improvements to be inspected in the manner determined by the Board to be appropriate under the circumstances. The Board shall notify Declarant within thirty (30) days of Declarant's notice whether such improvements have been satisfactorily completed or if the Board's position is that there are remaining items to be constructed or repaired. If (a) either the Board confirms that such improvements are complete, or the Board fails to notify Declarant of any remaining items to be constructed or repaired, and (b) either (i) the statutory period for recording mechanics' liens has expired, or (ii) the Association has been provided with a title policy or endorsement, as applicable, with coverage in an amount not less than the cost of the improvements, insuring that the improvements are free of liens and claims, then Declarant shall be entitled to the release of any bonds,

letters of credit or other security held by the Association with respect to such improvements, and the Board shall cooperate with Declarant respect to such release.

**Section 11.8 Owner's Compliance.** Each Owner of a Condominium and/or occupant of a Unit shall comply with the provisions of the Governing Documents and the decisions and resolutions of the Association or its duly authorized representative as such may be lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for action to recover sums due for damages or for injunctive relief. All arrangements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Owners of Condominiums and their successors and assigns.

**Section 11.9 Joint and Severable Liability.** When the Owner of a Unit is comprised or more than one person, each such person shall be jointly and severally liable for payment of Assessments, and the performance of all obligations arising under any provision of the Governing Documents with respect to such Unit or the ownership thereof.

**Section 11.10 Conflict.** In the case of any conflict or inconsistencies between the Articles and Bylaws and this Declaration, this Declaration shall control.

**Section 11.11 Use of Words.** Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns have been used herein in their generic sense as a reference to all Persons without regard to sex. The use of the word "including" does not limit the possible examples of the matter discussed.

**Section 11.12 Statutory References.** All references in this Declaration to particular statutes or codes are references to the laws of the State of California or United States and should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made. If a statute is repealed and no replacement statute applies, then the requirement of the prior statute shall apply unless amended by the Association.

**Section 11.13 Notices.** Any notice permitted or required by this Declaration, the Articles or the Bylaws may be delivered by either personally or by mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable. If delivered by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Person at the current address given by such Person to the Secretary of the Association or addressed to the Unit of such Person if no address has been given to the Secretary.

**Section 11.14 No Discrimination.** Notwithstanding anything that may be stated herein, no provision of this Declaration shall purport to restrict or abridge, directly or indirectly, the right of an Owner to sell or lease his Condominium because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, family status, or other limitation prohibited by law, of a proposed or actual buyer or occupant.

**Section 11.15 Power of Attorney.**

(a) Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire

Development and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code Section 4610 and under the circumstances authorizing partition under this Declaration. This power of attorney shall (i) be binding on all Owners, (ii) be exercisable by a majority of the Board acting on behalf of the Association subject to obtaining the prior approval by vote or written consent of sixty-seven percent (67%) of all Mortgagees of First Mortgages, and (iii) be exercisable only after recordation in the Official Records of the City and County of San Francisco of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any Person relying on in it good faith.

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

**Section 11.16 Special Tax Assessment; Mello-Roos Community Facilities District; Community Benefit District.** The Development may lie within the boundaries of a special tax assessment district, Mello-Roos Community Facilities District and a Community Benefit District that require the levy of special taxes or assessments for repayment of bonds issued for the purpose of paying the cost of services or capital improvements, or for payment of community facilities or benefits. Unit Owner's and/or the Association may be required to pay such special taxes and assessments. The amount of the special taxes, assessments and any other information pertaining to any such district(s) can be obtained from the San Francisco Assessor's Office.

**Section 11.17 Limit of Liability of Declarant Parties.** To the greatest extent allowed by law, the liability of Declarant for Declarant's obligations under this Declaration (or any amendments or supplements thereto) shall be limited to Declarant's interest in the Property, and no Owner, Occupant or the Association shall look to any other property or assets of Declarant, or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, agent or affiliate of Declarant (collectively, the "Declarant Parties") in seeking either to enforce Declarant's obligations under this Declaration (or any amendments or supplements thereto) to satisfy a judgment for Declarant's failure to perform such obligations; and none of the Declarant Parties shall be personally liable for the performance of Declarant's obligations under this Declaration (or any amendments or supplements thereto).

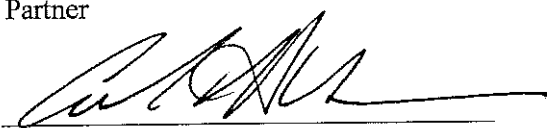
**[balance of page intentionally left blank - signature(s) on following page]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has issued this Declaration as of the day and year written below.

Date: 10/7/15

1400 MISSION ACQUISITION, L.P.,  
A DELAWARE LIMITED PARTNERSHIP

By: 1400 Mission Acquisition GP, L.L.C.,  
a Delaware limited liability company  
Its: General Partner

By: 

Name: Authorized Signatory

Carl D. Shannon

Title: \_\_\_\_\_

**NOTARY ACKNOWLEDGEMENT**

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California ) SS  
COUNTY OF San Francisco )

On October 7, 2015,

before me, Betty M. Dankas, a Notary Public, personally appeared  
Carl D. Shannon

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

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

WITNESS my hand and official seal.

B. Dankas  
Signature of Notary Public



(Notary Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

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

Lot 1 as shown on "Final Map 8135", recorded on September 17, 2015, in Condominium Map Book 127, at Pages 197 through 200, inclusive, in the Official Records of the City and County of San Francisco, State of California.

Assessor's Block 3507, Lot 820

**EXHIBIT B**

**PERCENTAGES FOR PRORATION OF COMMON EXPENSES**  
**(See Section 4.8 of the Declaration)**

Percentages for Proration of variable Common Expenses, are shown below as "Residential Assessment Interest".

| <b>Unit<br/>Number</b> | <b>Residential<br/>Assessment<br/>Interest</b> |
|------------------------|------------------------------------------------|
| 200                    | 0.0056                                         |
| 201                    | 0.0086                                         |
| 202                    | 0.0086                                         |
| 203                    | 0.0056                                         |
| 204                    | 0.0055                                         |
| 206                    | 0.0055                                         |
| 206                    | 0.0039                                         |
| 207                    | 0.0039                                         |
| 208                    | 0.0056                                         |
| 209                    | 0.0026                                         |
| 210                    | 0.0038                                         |
| 211                    | 0.0059                                         |
| 212                    | 0.0039                                         |
| 213                    | 0.0057                                         |
| 214                    | 0.0057                                         |
| 300                    | 0.0056                                         |
| 301                    | 0.0086                                         |
| 302                    | 0.0086                                         |
| 303                    | 0.0056                                         |
| 304                    | 0.0055                                         |
| 305                    | 0.0055                                         |
| 306                    | 0.0039                                         |
| 307                    | 0.0040                                         |
| 308                    | 0.0056                                         |
| 309                    | 0.0040                                         |
| 310                    | 0.0038                                         |
| 311                    | 0.0059                                         |
| 312                    | 0.0039                                         |
| 313                    | 0.0057                                         |
| 314                    | 0.0057                                         |
| 400                    | 0.0056                                         |

| <b>Unit<br/>Number</b> | <b>Residential<br/>Assessment<br/>Interest</b> |
|------------------------|------------------------------------------------|
| 401                    | 0.0086                                         |
| 402                    | 0.0086                                         |
| 403                    | 0.0056                                         |
| 404                    | 0.0055                                         |
| 405                    | 0.0055                                         |
| 406                    | 0.0039                                         |
| 407                    | 0.0040                                         |
| 408                    | 0.0056                                         |
| 409                    | 0.0040                                         |
| 410                    | 0.0038                                         |
| 411                    | 0.0059                                         |
| 412                    | 0.0039                                         |
| 413                    | 0.0057                                         |
| 414                    | 0.0057                                         |
| 500                    | 0.0056                                         |
| 501                    | 0.0086                                         |
| 502                    | 0.0086                                         |
| 503                    | 0.0056                                         |
| 504                    | 0.0055                                         |
| 505                    | 0.0055                                         |
| 506                    | 0.0039                                         |
| 507                    | 0.0040                                         |
| 508                    | 0.0056                                         |
| 509                    | 0.0040                                         |
| 510                    | 0.0038                                         |
| 511                    | 0.0059                                         |
| 512                    | 0.0039                                         |
| 513                    | 0.0057                                         |
| 514                    | 0.0057                                         |
| 600                    | 0.0056                                         |
| 601                    | 0.0086                                         |
| 602                    | 0.0086                                         |
| 603                    | 0.0056                                         |
| 604                    | 0.0055                                         |
| 605                    | 0.0055                                         |
| 606                    | 0.0039                                         |
| 607                    | 0.0040                                         |
| 608                    | 0.0056                                         |
| 609                    | 0.0040                                         |
| 610                    | 0.0038                                         |
| 611                    | 0.0059                                         |
| 612                    | 0.0039                                         |
| 613                    | 0.0057                                         |
| 614                    | 0.0057                                         |
| 700                    | 0.0056                                         |

| <b>Unit<br/>Number</b> | <b>Residential<br/>Assessment<br/>Interest</b> |
|------------------------|------------------------------------------------|
| 701                    | 0.0086                                         |
| 702                    | 0.0086                                         |
| 703                    | 0.0056                                         |
| 704                    | 0.0055                                         |
| 705                    | 0.0055                                         |
| 706                    | 0.0039                                         |
| 707                    | 0.0040                                         |
| 708                    | 0.0056                                         |
| 709                    | 0.0040                                         |
| 710                    | 0.0038                                         |
| 711                    | 0.0059                                         |
| 712                    | 0.0039                                         |
| 713                    | 0.0057                                         |
| 714                    | 0.0057                                         |
| 800                    | 0.0056                                         |
| 801                    | 0.0086                                         |
| 802                    | 0.0086                                         |
| 803                    | 0.0056                                         |
| 804                    | 0.0055                                         |
| 805                    | 0.0055                                         |
| 806                    | 0.0039                                         |
| 807                    | 0.0040                                         |
| 808                    | 0.0056                                         |
| 809                    | 0.0040                                         |
| 810                    | 0.0038                                         |
| 811                    | 0.0059                                         |
| 812                    | 0.0039                                         |
| 813                    | 0.0057                                         |
| 814                    | 0.0057                                         |
| 900                    | 0.0056                                         |
| 901                    | 0.0086                                         |
| 902                    | 0.0086                                         |
| 903                    | 0.0056                                         |
| 904                    | 0.0055                                         |
| 905                    | 0.0055                                         |
| 906                    | 0.0039                                         |
| 907                    | 0.0040                                         |
| 908                    | 0.0056                                         |
| 909                    | 0.0040                                         |
| 910                    | 0.0038                                         |
| 911                    | 0.0059                                         |
| 912                    | 0.0039                                         |
| 913                    | 0.0057                                         |
| 914                    | 0.0057                                         |
| 1000                   | 0.0056                                         |

| Unit<br>Number | Assessment<br>Interest |
|----------------|------------------------|
| 1001           | 0.0086                 |
| 1002           | 0.0086                 |
| 1003           | 0.0056                 |
| 1004           | 0.0055                 |
| 1005           | 0.0055                 |
| 1006           | 0.0039                 |
| 1007           | 0.0040                 |
| 1008           | 0.0056                 |
| 1009           | 0.0040                 |
| 1010           | 0.0038                 |
| 1011           | 0.0059                 |
| 1012           | 0.0039                 |
| 1013           | 0.0057                 |
| 1014           | 0.0057                 |
| 1100           | 0.0047                 |
| 1101           | 0.0055                 |
| 1102           | 0.0039                 |
| 1103           | 0.0040                 |
| 1104           | 0.0056                 |
| 1105           | 0.0040                 |
| 1106           | 0.0038                 |
| 1107           | 0.0059                 |
| 1108           | 0.0039                 |
| 1109           | 0.0057                 |
| 1110           | 0.0057                 |
| 1200           | 0.0047                 |
| 1201           | 0.0055                 |
| 1202           | 0.0039                 |
| 1203           | 0.0040                 |
| 1204           | 0.0056                 |
| 1205           | 0.0040                 |
| 1206           | 0.0038                 |
| 1207           | 0.0059                 |
| 1208           | 0.0039                 |
| 1209           | 0.0057                 |
| 1210           | 0.0057                 |
| 1300           | 0.0047                 |
| 1301           | 0.0055                 |
| 1302           | 0.0039                 |
| 1303           | 0.0040                 |
| 1304           | 0.0056                 |
| 1305           | 0.0040                 |
| 1306           | 0.0038                 |
| 1307           | 0.0059                 |
| 1308           | 0.0039                 |

| <b>Unit<br/>Number</b> | <b>Residential<br/>Assessment<br/>Interest</b> |
|------------------------|------------------------------------------------|
| 1309                   | 0.0057                                         |
| 1310                   | 0.0057                                         |
| 1400                   | 0.0047                                         |
| 1401                   | 0.0055                                         |
| 1402                   | 0.0039                                         |
| 1403                   | 0.0040                                         |
| 1404                   | 0.0056                                         |
| 1405                   | 0.0040                                         |
| 1406                   | 0.0038                                         |
| 1407                   | 0.0059                                         |
| 1408                   | 0.0039                                         |
| 1409                   | 0.0057                                         |
| 1410                   | 0.0057                                         |
| 1500                   | 0.0047                                         |
| 1501                   | 0.0055                                         |
| 1502                   | 0.0039                                         |
| 1503                   | 0.0040                                         |
| 1504                   | 0.0056                                         |
| 1505                   | 0.0040                                         |
| 1506                   | 0.0038                                         |
| 1507                   | 0.0059                                         |
| 1508                   | 0.0039                                         |
| 1509                   | 0.0057                                         |
| 1510                   | 0.0057                                         |

## EXHIBIT C

### MINIMUM MAINTENANCE RESPONSIBILITIES

**[THE FOLLOWING STANDARDS APPLY IN ADDITION TO THE GENERAL MAINTENANCE OBLIGATIONS AND STANDARDS AND ANY OTHER SPECIFIC OBLIGATIONS AND STANDARDS DESCRIBED IN SECTIONS 5.1 AND 5.2 OF THIS DECLARATION]**

| ITEM                                                                                    | OWNER/ASSOCIATION RESPONSIBILITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UNIT OR BUILDING EXTERIOR</b>                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Unit Entry Door                                                                         | <p><u>Owner:</u></p> <p>Owner shall (i) clean, maintain and paint interior surface of door, and (ii) clean, maintain, repair and replace (except if the Association is replacing the door, in which case the Association shall replace such equipment) all hardware, hinges, glass, the handle and lock mechanism, door closers, drop seals, door sweeps and other mechanical equipment on the exterior boundaries of a residential unit.</p> <p><u>Association:</u></p> <p>Association shall (i) repair and replace exterior surface of door, and (ii) clean, maintain, repair, replace, paint, stain or waterproof exterior surface of door.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Mailbox                                                                                 | <p>Owner shall be responsible for replacement of key and lock, in the event of lost key.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Windows, including metal frames, tracks and exterior screens of glass doors and windows | <p><u>Owner:</u></p> <p>Owner shall (i) maintain all glass, any screens and lock mechanism, (ii) operable window mechanisms, and (iii) replace broken glass.</p> <p>Owner shall be responsible for washing of the interior of all windows in the Owner's Unit.</p> <p>Owner shall be responsible for washing of the exterior of all windows of the Owner's Unit that may be safely reached from the Unit.</p> <p>Owner shall pay for the cost of repair and/or replace all windows serving that Owner's Unit, provided that the Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion.</p> <p><u>Association:</u></p> <p>Association shall (i) maintain frame, weather stripping and caulking, and (ii) maintain, repair and/or replace all windows in the shared common portions of the Condominium Building. The Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion.</p> |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Individual Electric Car Chargers Assigned to Certain Owners                                                                                                                                                       | Association shall be obligated to clean, maintain, repair and replace the electric car charger, but any costs in doing so shall be payable by the applicable Owner for whom the maintenance or service is being performed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>UNIT INTERIOR</b>                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Unit Interior                                                                                                                                                                                                     | <p><u>Owner:</u><br/>Owner shall maintain all interior doors, door frames, door locks, door thresholds, door hardware, interior wall surfaces (including paint and/or wall coverings), window coverings, drywall, cabinets, countertops, backsplashes, bathroom and kitchen fixtures, floor coverings, ceilings, permanent fixtures, trade fixtures, appliances, mirrors, any HVAC unit exclusively servicing the Owner's unit (including the components that are located outside the Unit, if any), toilets, smoke detectors, washing machine water hoses, washer and dryer pan drains and connections, plumbing fixtures, and all other items within the Unit whether free-standing or built in. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the building housing the Units may be pierced or otherwise altered or repaired without approval from the Architectural Control Committee.</p> <p><u>Association:</u><br/>Association shall maintain and repair the building fire alarm system and fire sprinkler heads within the Unit.</p>                |
| Water, Gas and Sewer Pipes, Water Pressure Regulator, Water Heater, Plumbing Outlets and Fixtures, Ducts (Heating, Dryer, Stove, Oven), Electrical, Circuit Breakers, Electrical Outlets and Fixtures, HVAC units | Owner shall maintain portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit (i.e., from the interior surface of the Unit's walls to the appliances, and kitchen and bathroom facilities within the Unit). An Owner may plunge blocked kitchen and bathroom facilities in his Unit, but may not use a snake, or cause a snake to be used, in any pipes unless instructed to do so by the Association. Owner shall maintain and repair the electrical system exclusively serving the Owner's Unit, including, but not limited to, light fixtures, light switches, light bulbs, bathroom fan fixtures, and wiring. Owner shall maintain the heating system and air-conditioning units that exclusively serve such Owner's Unit, including, but not limited to baseboard heaters, wall-mounted heaters, air-conditioning and heater fans and components. Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any maintenance of electrical wiring, or water, gas and sewer pipes or lines located within the Unit. |
| <b>UTILITIES</b>                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Telephone Wiring and Equipment                                                                                                                                                                                    | Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Common Area, and Owner is responsible for obtaining and having serviced, unless otherwise provided in the Condominium Documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Gas and Electric                                                                                                                                                                                                  | Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Common Area, and Owner is responsible for obtaining and having serviced, unless otherwise provided in the Condominium Documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |