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DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR THE  
955 WOODSIDE ROAD CONDOMINIUMS

THIS DECLARATION CONTAINS A JUDICIAL REFERENCE PROVISION AND A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE JUDICIAL REFERENCE AND ARBITRATION PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON AGE, RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN OR MILITARY STATUS, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE BY SUBMITTING A "RESTRICTIVE COVENANT MODIFICATION" FORM, TOGETHER WITH A COPY OF THE ATTACHED DOCUMENT WITH THE UNLAWFUL PROVISION REDACTED TO THE COUNTY RECORDER'S OFFICE. THE "RESTRICTIVE COVENANT MODIFICATION" FORM CAN BE OBTAINED FROM THE COUNTY RECORDER'S OFFICE AND MAY BE AVAILABLE ON ITS INTERNET WEBSITE. THE FORM MAY ALSO BE AVAILABLE FROM THE PARTY THAT PROVIDED YOU WITH THIS DOCUMENT. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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**DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN  
FOR THE 955 WOODSIDE ROAD CONDOMINIUMS  
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**DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN  
FOR THE 955 WOODSIDE ROAD CONDOMINIUMS**

THIS DECLARATION, made as of November 5, 2024, by 955 WOODSIDE RD LLC, a California limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

**A. Location of Property.** Declarant is the Owner of certain real property (the "Property") located in the City of Redwood City ("City"), County of San Mateo County", State of California, more particularly described as Lot 1 on the certain final subdivision map entitled "FINAL MAP NO. 2022-002", filed February 17, 2023, in Book 144 of Maps, Pages 62-65, Official Records of San Mateo County, California.

**B. Intention.** Declarant intends to improve said real property by constructing eight (8) Condominiums. Declarant intends to create a "condominium project," as defined in Section 4125 of the California Civil Code, to subdivide the properties as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

**C. Owner's Interest.** The development shall be referred to as the "Project" as defined in Section 1.45. The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided 1/8<sup>th</sup> interest in common in the Common Area of the Project. Each Condominium shall have appurtenant to it a membership in the 955 Woodside Road Owners Association, a nonprofit mutual benefit corporation, which shall manage, operate, maintain, and repair the Common Area.

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

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

## ARTICLE I. DEFINITIONS

- 1.1. **"Architectural Control Committee" or "Committee"**: Any Architectural Control Committee created pursuant to Section 7.9.
- 1.2. **"Articles"**: The Articles of Incorporation of the Association, as amended from time to time.
- 1.3. **"Assessment"**: The costs of inspecting, maintaining, improving, repairing, operating and managing the Project, including Reserves, which are to be assessed to and paid by each Owner as determined by the Association pursuant to Section 4.3, and shall include Regular Assessments, Special Assessments, and Reimbursement Charges.
- 1.4. **"Assessment Lien"**: A lien imposed by the Association on a Unit to collect a delinquent Assessment pursuant to California Civil Code section 5675.
- 1.5. **"Association"**: The 955 Woodside Road Owners Association, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.
- 1.6. **"Board" or "Board of Directors"**: The governing body of the Association.
- 1.7. **"Budget"**: A written, itemized estimate of the Association's income and Common Expenses prepared and adopted by the Association pursuant to the Bylaws.
- 1.8. **"Building"**: Each structure containing Units, as shown on the Condominium Plan.
- 1.9. **"Bylaws"**: The Bylaws of the Association, as amended from time to time.
- 1.10. **"Cal DRE"**: The California Department of Real Estate and any department or agency of the California state government that succeeds to Cal DRE's functions.
- 1.11. **"City"**: The City of Redwood City, California, a municipal corporation.
- 1.12. **"City Manager"**: The City Manager of the City.
- 1.13. **"Common Area(s)"**: The entire Project with the exception of the individual Condominium Units. Title to the Common Area shall be held by all of the Owners in common. The Common Area includes the land, the Buildings except for the Units, and those areas of the Project outside of and external to the Units, including: the private common roadway, driveways, parking spaces, walkways, stormwater treatment facilities. Common Area shall include any solar energy system that is installed on or within the Project by Declarant or the Association.
- 1.14. **"Common Expenses"**: Those expenses for which the Association is responsible under this Declaration, including, but not limited to, the following: (a) actual and estimated costs of inspecting, maintaining, managing and operating the Project including: the private common roadway, driveways, parking spaces, walkways, stormwater treatment facilities, built-in fire detection and protection equipment and devices, including any Common Area solar energy system as provided in Section 5.1.A and Unit roofs and siding as provided in Section 5.1.B; (b) unpaid Special Assessments, and amounts the Board determines are necessary to maintain and fully fund the Reserve Fund; (c) the costs of all utilities for the Common Area and any other utilities or services that are billed to the Association for the benefit of the Project as and to the extent provided in Section 6.3; (d) the cost of managing and administering the Association, including compensation for managers, accountants, attorneys, and employees; (e) inspection, maintenance, repair and replacement of Common Area improvements and facilities required by this Declaration and all other expenses incurred by the Association for the common benefit of the Owners, including the cost of inspection and maintenance services that benefit the Project; (f) premiums for all insurance covering the Project and insurance policies for the directors, officers and agents of the Association, and bonding the Members of the Board; (g) taxes paid by the Association; and (h) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project.
- 1.15. **"Common Interest"**: The one-eighth (1/8<sup>th</sup>) undivided interest in the Common Area that is a part of each Condominium as set forth in this Declaration.

1.16. **"Condominium"**: An estate in real property as defined in California Civil Code sections 783 and 4125(b), consisting of an undivided interest in common in the Common Area of the Project and a separate interest in space that is defined and established herein as the Unit.

1.17. **"Condominium Plan"**: The three-dimensional plan of the Condominiums built or to be built on the property in the Project which identifies the Units and the Common Area pursuant to California Civil Code sections 4120 and 4285 recorded in the Official Records of the County on NOVEMBER 18, 2024 as Document No. 2024-061496.

1.18. **"County"**: The County of San Mateo.

1.19. **"Davis-Stirling Act"**: California Civil Code sections 4000, et seq.

1.20. **"Deck"**: An Exclusive Use Common Area Deck designated for a Unit.

1.21. **"Declarant"**: 955 Woodside Rd LLC, a California limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.

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

1.23. **"Demising Wall"**: A wall between contiguous Units, the space within which is Common Area.

1.24. **"Design Guidelines"**: The rules or guidelines setting forth procedures and standards for submission of plans for Board review and approval.

1.25. **"Eligible Mortgages"**: Mortgages held by "Eligible Mortgage Holders."

1.26. **"Eligible Mortgage Holder"**: A holder, insurer, or guarantor of a First Mortgage on a Unit or portion of the Project which has requested timely written notices from the Association, in a written request that includes the name and address of the Eligible Mortgage Holder, and the Unit number if applicable.

1.27. **"Eligible Insurer or Guarantor"**: An insurer or governmental guarantor of a First Mortgage.

1.28. **"Exclusive Use Common Area"**: Those portions of the Common Area set aside for exclusive use of an Owner pursuant to Section 2.2.C, which shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code section 4145.

1.29. **"First Lender"**: Any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Condominium or portion of the Project. Any rights or privileges granted to a First Lender on a Unit or Condominium by this Declaration shall include any First Lender on any other portion of the Project.

1.30. **"First Mortgage"**: Any Mortgage recorded in the County made in good faith and for value on a Condominium or any portion of the Project with first priority over other Mortgages encumbering the Condominium or the Project.

1.31. **"Foreclosure"**: The legal process by which any portion of the Project or 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 § 725a et seq. and any other applicable laws.

1.32. **"Governing Documents"**: This Declaration, as amended from time to time, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, the Condominium Plan and the Rules, and any Design Guidelines adopted by the Board or the Association.



**1.33. "Hazardous Materials":** Any substance, material or waste which is or becomes: (i) regulated by any local or regional Governmental authority of the State of California or the United States Government as a hazardous waste; (ii) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, Sections 25115, 25117, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (iii) defined as a "Hazardous Substance" under Section 25316 of the California Health and Safety Code; (iv) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code; (v) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code; (vi) asbestos; (vii) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, natural gas, or synthetic fuels, (viii) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (ix) pesticides, herbicides and fungicides; (x) polychlorinated biphenyls; (xi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (xii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (xiii) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (xiv) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (xv) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.; or (xvi) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).

**1.34. "Homeowners Association Handbook":** Recommendations and directions for inspection and maintenance of Common Area improvements by the Association and/or the Board.

**1.35. "Homeowners Handbook":** Recommendations and directions for inspection and maintenance of Units by Owners.

**1.36. "Major Components":** Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in California Civil Code sections 5300(b) and 5550.

**1.37. "Map":** The Map described above in Introductory Paragraph A.

**1.38. "Member":** A person entitled to membership in the Association as provided herein.

**1.39. "Mortgage":** A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium or any portion of the Project, made in good faith and for value.

**1.40. "Mortgagee":** The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

**1.41. "Mortgagor":** A Person who encumbers his Condominium with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.

**1.42. "Notice of Delinquent Assessment":** A Notice of Delinquent Assessment filed by the Association for a delinquent Assessment pursuant to Section 4.9.C.

**1.43. "Occupant":** A Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, contract purchaser, family member, or relative.

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

"Owner" from and after the date the Association receives written notice of the recorded contract of sale.

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

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

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

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

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

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

1.51. **"Reserve Study"**: The tri-annual study of Major Components of a Common Interest Development required by California Civil Code sections 5550 and 5560.

1.52. **"Residence"**: The residential components of a Building located within a Unit.

1.53. **"Right to Repair Law"**: Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code ("SB 800").

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

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

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

1.57. **"Unit"**: The elements of the Condominium, as defined in Section 2.2.A, and in Section 4125(b) of the California Civil Code, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by separate number on the Condominium Plan.

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

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

**2.1. Description of Project:** The Project is a Condominium Project within the meaning of California Civil Code section 4125. The Project consists of the eight (8) Units and the Common Area. Reference is made to the Condominium Plan for further details.

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

**A. Units:** Each of the Units as separately shown, numbered and designated in the Condominium Plan. Each Unit consists of the space bounded by and contained within airspace as shown on the Condominium Plan, including the exterior portions of the Building so described, including the walls, the roof, the garage, and the foundation, the interior and perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit."

(a) Bearing walls located within the interior of a Unit are part of the Unit. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation: Appliances, water heaters, space heaters, air conditioning units, furnace, washer, dryer, cabinetry and lighting fixtures.

(b) Each Unit includes the garage area within the Unit boundaries for use by the Owner of the Unit for garage purposes.

(c) Each Unit includes the stairs and staircase inside the Unit.

(d) Each Unit includes both the portions of the Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Common Area" in Section 1.13.

(e) Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Section 9.5.

(f) In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

(g) Each Condominium shall have appurtenant to it, nonexclusive easements for ingress, egress and support through the Common Area, subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to the Owner's Condominium, including the driveways and walkways located within the Common Area, subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to the Owner's Condominium.

**B. Common Areas:** The remainder of the Project, other than the Units as herein defined and described, constitutes "Common Area" as defined in Section 1.13. Each Condominium Owner shall have, as appurtenant to his or her Unit, an equal one-eighth (1/8<sup>th</sup>) undivided interest in the Common Area. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Areas in accordance with the purposes for which they are intended subject to the Governing Documents, without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium. Each Unit shall have a non-exclusive easement over the Common Area for use of the storm drains and sanitary sewers that are located within the Common Area of the Project.

**C. Exclusive Use Common Areas:** The following described portions of the Common Area, referred to as "Exclusive Use Common Areas," are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to that Condominium: Deck designated "D" on the Condominium Plan, followed by the applicable number of the Unit. The air conditioning equipment serving a Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Owner. The space occupied by the air conditioning equipment,

wherever located, shall be restricted to the exclusive use of the Owner whose air conditioning equipment occupies such space. Except as described herein, no other portion of the Common Areas shall be Exclusive Use Common Area.

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

**2.3. Parking:** All unassigned Common Area parking spaces shall remain permanently available for guest parking in accordance with Association Rules.

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

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

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

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

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

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

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

**G.** The rights of Owners to make improvements or alterations authorized by California Civil Code section 4760(a)(2), subject to the provisions of Section 7.9 to the extent applicable.

**2.5. Party Walls:**

**A.** General Rules of Law to Apply: Each wall, footing or foundation that is built as part of the original construction of a Residence, is located on the boundary line with an adjacent Unit

and either is used in common with the Residence on the adjacent Unit or abuts against a similar wall, footing or foundation and/or common roof system on the adjacent Unit shall constitute a "party wall."

To the extent not inconsistent with the provisions of this Section 2.22, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**B. Sharing of Repair and Maintenance:** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the party wall in proportion to such use.

**C. Destruction by Fire or Other Casualty:** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may restore it, and if the other Owners thereafter make use of the party wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction, shall bear the full cost of restoration that is not covered by insurance.

**D. Weatherproofing:** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**E. Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this Section 2.5 shall be appurtenant to the land and shall pass to such Owner's successors in title.

**F. Arbitration:** In the event of any dispute arising concerning a party wall, or concerning the provisions of this section, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the Judicial Arbitration and Mediation Services ("JAMS"), or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and judgment may be entered thereon in any court having jurisdiction.

**2.6. Partition of Common Area Prohibited:** The Common Area shall remain undivided as set forth in Section 2.2.B, above. Except as provided by California Civil Code section 4610 or authorized under Sections 8.2.B or 8.3, no Owner shall bring any action for partition of the Common Area, it being agreed and understood that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph. Any proceeds or property resulting from a partition of the Common Area shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area.

**2.7. All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration or on the Map or Condominium Plan, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project. The Map contains certain easements that apply to the Project, including: emergency vehicle access easement [E.V.A.W.], public service easement [P.S.E.], Private ingress and egress easement [P.I.E.E.], public access easement [P.A.E.].

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

**3.1. Association to Manage Common Areas:** The management of the Common Area and all improvements therein shall be vested in the Association in accordance with this Declaration and the Association's Bylaws. The Association shall be self-managed. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of the Governing Documents.

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

**3.3. Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee. A Mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

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

### ARTICLE IV. ASSESSMENTS; LIENS AND FORECLOSURE

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

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

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

The Regular and Special Assessments, and Reimbursement Charges, as permitted under Section 4.10, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing Assessment Lien upon the Condominium against which each such Assessment is made, the Assessment Lien to become effective upon recordation of a Notice of Delinquent Assessment. Each Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium. The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2. Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the Owners and other residents in the Project and to enable the Association to perform its obligations under this Declaration, including, without limitation, the maintenance of all Common Area improvements in good condition at all times.

#### **4.3. Assessments:**

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

The Regular Assessment shall include a portion for Reserves in such amounts as necessary to fully fund Reserves to meet the costs of the future inspection, repair, replacement or additions to the Major Components and fixtures that the Association is obligated to maintain and repair. Reserve Funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be Members of the Board or one officer who is not a Member of the Board and a member of the Board shall be required to withdraw monies from the Reserve account.

**B. Special Assessments:** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or Reserve Funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing a Member into compliance with provisions of the Governing Documents, or to replace insurance proceeds pre-empted pursuant to Section 8.2.A.

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

**A. Approval of Members for Certain Assessments.** Except as provided in Section 4.4.B, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this Section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code section 5605(a), or having obtained the approval of such increase by the Members in the manner set forth above in this Section 4.4.

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

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

The Association shall provide to the Owners, by first-class mail, notice of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. This Section 4.4.B

incorporates the statutory requirements of California Civil Code section 5610. If this Section of the California Civil Code is amended in any manner, this Section 4.4.B shall be automatically amended in the same manner without the necessity of amending this Declaration.

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

**4.5. Division of Assessments:** Both Regular Assessments and Special Assessments shall be levied equally among the Condominiums as set forth in the Association's Budgets. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.6. Date of Commencement of Regular Assessment; Due Dates:** Regular Assessments provided for in this Declaration shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner under authority of a Public Report. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall use its best efforts to fix the amount of the Regular Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Regular Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

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

**4.8. Transfer of Condominium by Sale or Foreclosure:** Sale or transfer of any Condominium shall not affect the Assessment Lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish the Assessment Lien of any Assessments on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). Any First Lender who obtains title to a Condominium pursuant to remedies in the Mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted Assessment accrued before acquisition of the title to the Unit by the First Lender, and will be liable (together with all other Owners) for fees or costs related to the collection of unpaid Assessments. No sale or transfer shall relieve such Condominium from liability for any Assessments becoming due after the foreclosure sale or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Owners including such acquirer, his 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.

**4.9. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection



of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of California Civil Code section 5675. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of California Civil Code section 5730 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

**A. Statement of Charges:** At least thirty (30) days prior to the Association recording an Assessment Lien upon a Unit pursuant to California Civil Code section 5650, the Association shall notify the Owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to California Civil Code section 5205, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

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

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

(4) The right to request a meeting with the Board as provided by California Civil Code section 5675.

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in California Civil Code, Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 of the California Civil Code before the Association may initiate foreclosure against the Owner's Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

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

**C. Notice of Delinquent Assessment:** After compliance with the provisions of California Civil Code section 5660(a), the Association may record a Notice of Delinquent Assessment

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

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

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

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

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

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

(2) By recording a lien on the Owner's Unit upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than twelve (12) months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(3) Any other manner provided by law, except for judicial or non-judicial foreclosure.

**F. Foreclosure:** The Association may collect delinquent Regular Assessments or delinquent Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any Assessments that are more than twelve (12) months delinquent, by a civil action, including, if within the jurisdiction of the small claims court, in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the California Code of Civil Procedure, or any other manner provided by law, including using judicial or non-judicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in California Civil Code Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code or alternative dispute resolution as set forth in California Civil Code Article 3 (commencing with Section §5925) of Chapter 10 of the California Civil Code. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

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

(4) A non-judicial 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 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code section 5310. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

**G. Sale by Trustee:** Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in California Civil Code sections 2924c and 2924d. [Civ. Code 5735] Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments, nor from taking a deed in lieu of foreclosure.

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

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

After acquiring title to the Condominium at Foreclosure sale following notice and publication, the

Association may execute, acknowledge and record a deed conveying title to the Condominium which deed shall be binding upon the Owners, successors, and all other parties.

I. **Fines and Penalties:** In accordance with California Civil Code section 5725(b), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with the Governing Documents, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to California Civil Code section 5725(a), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner or Occupant(s) were responsible may become the subject of a lien; provided, however, that any such enforcement as a lien shall only be permitted if there are no Units in the Project that are subject to the jurisdiction of the Cal DRE under a Final Subdivision Public Report. In the event that California Civil Code section 5725(b) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with the Governing Documents to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of California Civil Code section 5725(b).

The provisions of this Section 4.9 are intended to comply with the current requirements of California Civil Code section 5725. If these Sections are amended or rescinded in any manner the provisions of this Section 4.9 automatically shall be amended or rescinded in the same manner. California Civil Code sections 5650-5735 may be amended by the State Legislature, and the Board should confirm the current statutory requirements.

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

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

**4.12. Estoppel Certificate:** Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Condominium is in violation of any of the provisions of the Governing Documents; (ii) the amount of Regular Assessments and Special Assessments, and Reimbursement Charges, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information, provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## ARTICLE V. DUTIES AND POWERS OF THE ASSOCIATION

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

**A. Common Area Maintenance:** The Association shall inspect, maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area and all facilities (including Utility Facilities to the extent described in Section 6.3), improvements, furnishings, equipment and thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Condominium as required by Section 7.21. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget, and in conformance with the Homeowners Association Handbook. Unless specifically provided in the Homeowners Association Handbook, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property and improvements thereon, based on industry standards, or, in the event that industry standards do not exist, or are in the opinion of the Board unsatisfactory, based on recommendations from consultants.

**(1) Common Area Maintenance Items:** Maintenance shall include, without limitation, inspecting, painting, maintaining, cleaning, repairing and replacing of all improvements within the Common Area, including the private common roadway and driveway areas, parking areas, walkways, sanitary sewer system and those items in Subsections 5.1.A (2), (3), (7) and (8), Sections 5.1.B and 6.3, below.

**(2) Landscaping and Hardscaped Areas.** Common Area maintenance shall include regular maintenance of the landscaping and hardscaped areas such as walkways and pathways, pursuant to and in accordance with the Landscape Maintenance Agreement with the City, except for landscaping areas in the Exclusive Use Common Area Decks which are to be cleaned, maintained and repaired by Owners as per Section 7.21. The Association shall maintain front porch areas adjacent to each Unit including the drainage facilities in the planters located therein.

**(3) Storm Water Management.** The Association shall undertake maintenance and operation of the stormwater treatment facilities for the Project in compliance with the requirements of the City, pursuant to and in accordance with the Stormwater Treatment Measures Maintenance Agreement with the City.

**(4) Waste and Recycling.** The Association shall provide for waste and recycling services for the Common Areas and the Units as a Common Expense and shall undertake to keep the Common Area common private road, parking areas, private sidewalks free from litter and stains.

**(5) Transportation Demand Management Program.** The Association shall be responsible for implementation of any transportation demand management program requirements as provided in Section 9.17.B.

**(6) Responsibility of Owners for Maintenance Costs:** The Association shall be entitled to levy the costs of inspection, maintenance and repair for repairs or replacements to the Common Areas arising out of or caused by the willful or negligent act or omission of an Owner or Occupant or the Owner's or Occupant's pets, to the responsible Unit Owner. The Association shall be responsible for making the repairs, and the responsible Owner shall reimburse the Association for the costs for such repairs, and if the repair is covered by the insurance carried by the Association, pay any deductible or other amounts that are not covered under the insurance policy for such occurrence. If the Owner fails to make such payments, then the Association may make such payment and shall charge the responsible Owner a Reimbursement Charge for reimbursement of such payment, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

**(7) Fire Protection Equipment:** The Association shall be responsible for the periodic (at least as often as required by City and per Title 19 of the California Code of Regulations),

inspection and maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any interior sprinklers and fire alarm systems, but excluding smoke/carbon monoxide detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. [The Association's obligation to maintain interior sprinklers extends only to the point where the line or lines serving the individual Units branch off of the main distribution lines, so that the maintenance of the laterals or branch lines that serve an individual Unit are the responsibility of the Owner(s). Maintenance shall include periodic testing of such equipment.

**(8) Inspection of Exterior Elevated Elements:** The Association shall comply with the provisions of Civil Code section 5551 for inspection of the "exterior elevated elements" of the Project as defined in that code section to be a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect.

**(9) Cooperation of Owners/Occupants:** Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's inspection, maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or Occupant's Unit and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance, inspections or repairs.

**B. Unit Roof and Siding Maintenance:** The Association shall inspect, maintain, repair, replace (when necessary), the roofs of Residences, including maintenance and repair of gutters and downspouts, and any Common Area solar energy system thereon, and shall inspect, maintain, repair, paint, replace (when necessary) the exterior walls, siding, stucco and trim of Residences.

**C. Inspection and Maintenance Guidelines; Homeowners Association Handbook:** The Declarant shall provide the Association with a Homeowners Association Handbook, and each Owner with a Homeowners Handbook for the inspection and maintenance of the improvements within the Project. The Board shall comply with the Homeowners Association Handbook for the periodic inspection and maintenance of the Common Area improvements that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain, including, without limitation, the maintenance requirements provided for in Section 5.1.A(2). The Board shall take all appropriate actions to implement and comply with the Homeowners Association Handbook.

**(1)** The Board shall cause professional inspections of Major Components and of all Common Area infrastructure to be routinely made. The Board shall engage professionals to conduct such inspection if the Board or the Association's manager deems that such inspections by professionals, such as an architect, a civil engineer or other such professionals, is warranted. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection. The Board shall cause a log ("Maintenance Log") to be kept for recording all inspection and maintenance performed, and to record who performed the work, the results, and the date the inspection or maintenance was performed.

**(2)** The Board shall prepare and maintain annual reports of the results of the inspection, and the status of maintenance of the Common Area, including a Maintenance Log. The reports shall address any noted deterioration which may require future attention.

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

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

(5) The Board may, from time to time, make appropriate revisions to the Homeowners Association Handbook based on the Board's review thereof, to update such handbook to provide for inspection and maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. No changes may be made to the Homeowners Association Handbook without the Declarant's prior written consent for a period of ten (10) years after completion of construction of the Common Area improvements, or the close of escrow on the sale of the first Unit, whichever occurs later.

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

**D. Insurance:** The Association shall maintain such policy or policies of insurance as are required by Section 8.1 of this Declaration.

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

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

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

**H. Enforcement:** The Association and the Board shall be responsible for the enforcement of this Declaration.

**I. Annual Budget:** During the month of December of each year, the Association shall establish a budget for all expenses of the Project for the coming year, including maintenance, insurance, repair, replacement, including reserves, and management. Each Condominium Owner shall be responsible for payment of its share of the budgeted expenses, and other expenses incurred by the Association during the year. On request of any Owner, the Association shall prepare and distribute any financial statements and reports that may be required by law.

**J. Utility Service:** The Association shall have the authority (but not the obligation) to obtain, for the benefit of the all the Condominiums, all water, gas and electric service and refuse collection.

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

**A. Utility Service:** The Association shall have the authority to obtain, water, gas and electric service and garbage and trash collection for the Common Areas.

**B. Easements:** The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for roads, utilities, communications services, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request. The Board of Directors may grant exclusive use easement rights over a portion of the Common Area to a Member with the affirmative vote of sixty-seven percent (67%) of the separate interests in the Project, and without the approval of the Members in those limited cases set forth in California Civil Code section 4600, and in such case the Board may cause an amendment to the Declaration and to the Condominium Plan to be recorded to conform to the grant of the exclusive use easement rights.

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

**D. Adoption of Rules:** The Board or the Members of the Association by majority vote, may adopt reasonable Rules that are not in conflict with the law, or with the Governing Documents, relating to the use of the Common Area and all its facilities, and the conduct of Owners and Occupants with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are either: (i) posted in a conspicuous place in the Common Area; or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages. The adoption of any Rules or amendment or repeal of any Rule shall comply with the procedures required by California Civil Code sections 4350, 4355, 4360 and 4365, to the extent applicable.

**E. Access:** For the purpose of performing inspections, construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in **Section 7.21**, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner or Occupant of the Unit in which such maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner or Occupant as practicable, and any damage caused by such entry shall be repaired at the expense of the Association.

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

**G. Fines and Disciplinary Action:** The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation by Owner, or Occupant for whom Owner is responsible, of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, or other appropriate discipline, provided the Owner is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2.D. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such Assessments as appropriate under applicable law.

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

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

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



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

**L. Contracts:** The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Condominiums, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of Section 8.1.A(3) herein.

**M. Delegation:** The Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility to make expenditures for capital additions or improvements chargeable against the Reserve Funds;

(1) to conduct hearings concerning compliance by an Owner or Occupant with the Governing Documents;

(2) to make a decision to levy monetary fines, levy Reimbursement Charges, or otherwise impose discipline;

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

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

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

**O. Appointment of Trustee:** The Board, acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 4.9 and California Civil Code section 5700(a).

**P. Litigation/Arbitration:** The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in Section 9.15, and only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant.

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

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

**R. Common Area Improvements:** The Board shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements

that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Board shall not include in any Regular Assessment or Special Assessment the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

**S. Granting Rights:** The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Condominiums; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project. This power includes the right to create and convey Exclusive Use Common Areas to the extent provided for in Section 5.2.B. The Association may deannex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

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

## **ARTICLE VI. UTILITIES**

**6.1. Owners' Rights and Duties:** The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, storm sewer, water, drainage, electric, gas, television receiving, telephone equipment, DSL, fiber optic or other cables and lines, meters, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, collectively, "Utility Facilities") shall be as follows:

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

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

**C.** In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to Section 9.15.E. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

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

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

As used in this Declaration, the term "as-built" plans shall mean and refer to the drawings indicating the precise locations of utility runs, which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans.

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

**6.3. Association's Duties:** The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in Section 7.21. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums. The Association shall have the right to arrange for and provide for submetering of water service to the Units, the costs of which water and sanitary service, metering, and service fees shall be borne by the Unit Owners of the Units; the Association shall also be authorized to pay the service provider of such submetering a billing processing fee as a Common Expense.

## ARTICLE VII. USE RESTRICTIONS

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

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

No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Condominiums or any portion of the Condominiums in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. This Section shall not be construed to limit the personal use of any Condominium or any portion of the Condominium in the Project by any Owner or Occupant, nor shall it be interpreted to disallow an Owner from trading the temporary use of its Condominium for the right to use another dwelling on a temporary basis, provided the frequency of such exchange is in accordance with the Rules.

No Unit shall be used for short term rental or hotel uses, including use as a bed and breakfast operation, vacation rental or other short term occupancy arrangements.

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

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

- A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care home;
- C. Abide by and comply with all of the Association's Rules;
- D. Supervise and be completely responsible for children at all times while they are within the project; and,
- E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the day care home to these conditions, or other reasonable requests.

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

**7.3. Allowed Vehicles and Parking:** Except as otherwise provided in this Section 7.3, only "Allowed Vehicles" shall be parked, stored or operated within the Project.

A. Allowed Vehicles shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of  $\frac{3}{4}$  ton or less, vans having seating capacity of eight (8) persons or less. Owners and/or Occupants shall park their Allowed Vehicles only in the garage appurtenant to or assigned to their Unit. Vehicles that are not Allowed Vehicles shall not be parked or stored in the Project, except for commercial vehicles or construction equipment that are providing services to a Unit or the Association (but only during the period of time in which such services are being provided and subject to the Rules). Allowed Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than  $\frac{3}{4}$  ton, van having seating capacity in excess of eight (8) persons or any vehicle which is too large to fit within the Owner's garage, inoperable or abandoned vehicles, boats or similar equipment. Allowed Vehicles that are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No excessively noisy or smoky vehicles shall be operated on the Project. No Owner or Occupant of any Unit shall park more than two (2) Allowed Vehicles within the Project at any one time. The Association shall have the right to adopt Rules requiring Owners and Occupants to register their vehicles with the Association and/or display a parking sticker, card, or other form of parking identification.

B. No parking shall be permitted within the common private road or driveways of the Project, except in parking areas designated by the Board as guest parking spaces. All such guest parking areas shall be used in accordance with the Governing Documents, including Association Rules, and the laws of California.

C. There shall be no parking of vehicles on the driveway or apron providing access to a garage.

D. The common private road and driveways of the Project are fire lanes and shall not be blocked and access shall not be impeded in any manner.

E. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the vehicle owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height, and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation. The Association shall enter into a written general towing authorization agreement with one or more towing companies as required by Vehicle Code Section 22658.

F. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an Owner or Occupant in accordance with applicable law. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. Unless the Board provides otherwise, any Director or officer, any manager or manager's agent or any Owner authorized to do so by any Director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Project.

G. No garage or parking space shall be converted into any use (such as a recreational room or storage room) that would prevent use for parking for the number of vehicles the space was designed to contain. There shall be no use of a garage for any residential purposes, such as sleeping, cooking or other uses except for parking of motor vehicles and storage that does not impair the use of the garage for parking the number of motor vehicles for which the garage was designed. Garage doors shall be kept closed at all times except when in use by the Occupant of the Unit which the garage is appurtenant, for ingress and egress to and from the garage. Owners are to use their garage and assigned parking space(s) (if any) for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Association may establish Rules from time to time for the parking of vehicles in the Common Area.

The provisions of this Section 7.3 are intended to comply with the current requirements of Vehicle Code Section 22658. If this Vehicle Code Section is amended, this provision automatically shall be amended in the same manner. If this Section is repealed and no successor Section is enacted, this provision shall remain in full force and effect. Vehicle Code Section 22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**7.4. Signs:** Subject to California Civil Code sections 712, 713 and 4710, no signs shall be displayed to the public view on any Condominium or on any other portion of the Project, except non-commercial signs may be displayed within a Condominium that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs, and that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Tax Deferred Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or his or her agent may display one (1) such For Sale or For Rent or For Tax Deferred Exchange sign within his or her Condominium and one sign in the Common Area advertising directions to the Owner's Unit which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs, and comply with the requirements of State law, and applicable local ordinances. These restrictions on display of signs apply to signs that are visible from the exterior of a Unit, and are not intended to restrict signs that may be seen only from within the Unit in which the sign(s) is displayed. Declarant's rights reserved under Section 9.7 are not limited by this Section.

**7.5. Animals:** Except as otherwise provided in the Governing Documents, no animals of any kind shall be raised, bred, or kept in any Condominium, or on any other portion of the Project. A "service animal" as defined in 28 CFR § 36.104, as the Code of Federal Regulations under the Americans with Disabilities Act of 1990, meaning a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, or as such definition may be revised by the government of the United States may be kept within the Project as long as such service animal is performing the work for which it has been trained. Owners or Occupants of Units may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Unit, and may keep a reasonable number (as determined by the Board) of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, board, or

maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Association. No Owner or Occupant shall allow his dog to enter the Common Area except on a leash.

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

Owners or Occupants shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit. An Owner or Occupant in violation of this Section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its' owner continue to violate the Rules regulating pets after receipt by the Owner or Occupant of a written demand from the Board to comply with the Rules.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination and evidence of certification of service animals. In no event shall any Owner or Occupant authorize, bring or keep within the Project: (a) any Pit Bull, Rottweiler, Doberman Pinscher, Mastiff, Presa Canario, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or other vermin.

**7.6. Garbage and Waste Disposal:** All trash, garbage, recycling materials and other waste materials ("Waste") shall be regularly removed from the Units, and shall not be allowed to accumulate therein. Waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such Waste materials shall be kept in a clean and sanitary condition, and shall be kept in the garage of the Unit screened from view of neighboring Units, Common Areas and streets. No toxic or Hazardous Materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. Each Owner shall be responsible for removal of Waste from its Unit. All Waste material shall be confined to approved receptacles and enclosures. Garbage, trash and recycling shall be placed in the appropriate containers in the Project's trash room area in accordance with the Association's Rules.

**7.7. Radio, Television, and Internet Antennas:** No outside television antenna, microwave or satellite dish, Internet dish or antenna, aerial, or other such device (collectively "Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Unit. Antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Rules and any Architectural Committee Standards and, if then required by the Architectural Committee Standards, any necessary approval is obtained in accordance with the provisions of Section 7.9. Reasonable restrictions which do not significantly increase the cost of the Antenna system or significantly decrease its efficiency or performance may be imposed. Antennas may not be attached to the exterior surface of any building or to any fence. The Architectural Control Committee shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code section 4725 and FCC [Federal Communications Commission] regulations.

**7.8. Right to Lease:**

**A.** Any Owner who wishes to lease or rent his Residence must meet each of the following requirements, and the lease or rental agreement ("Lease") will be subject to these requirements whether they are included within the lease or not:

- (1) all Leases must be in writing;
- (2) the Lease must be for the entire Residence and not merely parts of the Residence, unless the Owner remains in occupancy;
- (3) all Leases shall be subject in all respects to provisions of the Governing Documents and all Leases shall clearly obligate all Occupants to obey and comply with the Governing Documents;

(4) all Owners who lease or rent their Residences shall promptly notify the Secretary of the Association in writing of the names of all Occupants and members of Occupants' family occupying such Residences, and their respective vehicle and pet information, and shall provide the Secretary of the Association with a complete copy of the Lease. All Owners leasing or renting their Residence shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached; and,

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

(6) No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any short term or shared use or occupancy arrangements such as "Air BnB" or other arrangements that provide for the advertising, listing, locating and/or rental of a Condominium as short term or shared lodging.

(7) All tenants shall be notified of the responsibility to comply with the Project parking and transportation demand management program requirements as provided in Section 9.17.B.

B. Any failure of an Occupant to comply with the Governing Documents shall be a default under the Lease, regardless of whether the Lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the Occupant;

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

D. The Association shall give the Occupant, if the name and address of the Occupant has been provided to the Association in writing, and the Owner notice in writing of the nature of the violation of the Governing Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction; and,

E. Each Owner shall provide a copy of the Governing Documents to each Occupant of his or her Unit. By becoming an Occupant, each Occupant agrees to be bound by the Governing Documents, and recognizes and accepts the right and power of the Association to evict an Occupant for any violation by any Occupant of the Governing Documents.

**7.9. Architectural Control:** The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and any Architectural Control Committee shall operate pursuant to the following guidelines:

A. **Improvements:** Only the Association may construct or install improvements within the Common Area of the Project. There shall be no construction or installation of improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit or painting, alteration or modification of existing improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit by an Owner, his agents, Occupants, contractors or other representatives, including, but not limited to, a fence, wall, pool, spa, obstruction, outside or exterior wiring, screen, patio cover, tent, awning, carport cover, trellis, improvement or structure of any other kind within a Unit or within Exclusive Use Common Area, except as provided for in this Section 7.9 until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, an Owner may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not alter or impair the structural or fire protection elements, or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums or the Unit, and does not involve altering any Common Area (including bearing walls) and Utility Facilities. Notwithstanding the above, no exterior additions to the Residences, including the addition of pre-manufactured sunrooms and patio

covers, shall be permitted. No roof-mounted equipment except that initially installed by Declarant and approved by the City (which is to be covered from view) shall be permitted. All roof-mounted and other mechanical equipment shall be covered from view. Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired.

**B. Exterior Improvements:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Project, 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 an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not impair the structural 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 bearing walls). The Committee may consider the impact of views from other Condominiums along with other factors, including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other improvements. However, neither the Declarant nor the Association warrants that any views in the Property are protected. No Condominium is guaranteed the existence or unobstructed continuation of any particular view.

**C. Solar Energy System:** The Board shall not restrict or prohibit the installation or use of a solar energy system that is protected by law, including, without limitation, California Civil Code sections 714, 714.1 and 801.5, except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. NOTWITHSTANDING THE FOREGOING, ONLY THE ASSOCIATION SHALL BE AUTHORIZED AND PERMITTED TO OPERATE, MAINTAIN, REPAIR AND REPLACE THE SOLAR ENERGY SYSTEM THAT HAS BEEN INSTALLED WITHIN THE PROJECT BY DECLARANT. NO OTHER SOLAR ENERGY SYSTEM SHALL BE PERMITTED WITHIN THE PROJECT AS LONG AS THE COMMON SOLAR ENERGY SYSTEM IS BEING OPERATED BY THE ASSOCIATION.

**D. Plans:** Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations that require review hereunder shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation, and conformity to the Design Guidelines.

**E. Rebuilding:** No permission or approval shall be required to rebuild a Unit in accordance with Declarant's original plans and specifications. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee.

**F. Landscaping:** No landscaping shall be made or added by any Owner to the Common Areas or any Exclusive Use Common Area which is visible from the street or from the Common Area until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or by an Architectural Control Committee appointed by the Board. No rules or restrictions shall be adopted or applied which prohibit or have the effect of prohibiting the use of low water-using plants or that have the effect of prohibiting or restricting compliance with a water-efficient landscape ordinance, or have the effect of prohibiting or restricting compliance with any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the California Water Code. The Association may, however, apply landscaping rules and regulations, provided that such rules and regulations do not prohibit or restrict the use of low water-using plants, or prohibit or restrict compliance with any water efficient landscape ordinance, or any regulation or restriction on the use of water adopted pursuant to California Water Code sections 353 or 375.

**G. Architectural Control Committee:** The Board may choose to appoint an Architectural Control Committee or may choose to function as the Architectural Control Committee. Any Architectural Control Committee shall consist of three (3) Members appointed by the Board, and may include one or more Directors. The Board or a majority of the Architectural Control Committee



may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

**H. Approvals:** In the event the Board or Committee fails to approve or disapprove plans and specifications in writing within sixty (60) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Board or Committee shall in no way make the Board or Committee, or their 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.

The Board or Committee shall meet as necessary to perform its duties. The Board or Committee may, by resolution unanimously adopted in writing, designate a representative (who may be a licensed architect or other professional consultant retained by the Board or Committee) to review Applications and recommend action to be taken by the Board or Committee or to take any other action or perform any other duties for and on behalf of the Board or Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Board or Committee constitutes an act of the Board or Committee. All approvals issued by the Board or the Committee must be in writing. Verbal approvals issued by the Board or Committee, any individual Board or Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person and/or Owner.

In reviewing and approving or disapproving a proposed alteration, modification or improvements to a Unit, the Board or Committee shall satisfy the following requirements in accordance with California Civil Code section 4765:

(1) The Board or Committee shall provide a fair, reasonable, and expeditious procedure for making its decision in the Design Guidelines. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the Board of Directors if the decision is made by the Committee.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8, commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board if the decision is first made by the Committee.

(5) If a proposed change is disapproved by the Committee, the applicant is entitled to reconsideration by the Board at an open meeting of the Board. This paragraph does not require reconsideration of a decision that is made by the Board or a body that has the same membership as the Board, at a meeting that satisfies the requirements of California Civil Code section §§4900-4950. Reconsideration by the Board does not constitute dispute resolution within the meaning of California Civil Code section 5905.

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

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

The Committee or Board shall have the right to inspect work within sixty days after a written notice of completion has been delivered to the Committee or Board by the Owner. The Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that the Committee or Board approval is being followed. The Committee or Board may inspect the work performed, and determine whether it was performed and completed in compliance with the approval granted in all material respects. If at any time during the construction of any work, the Committee or Board finds that the work was not performed or completed in compliance with the approval granted in all material respects, or if the Committee or Board finds that the appropriate approval which was required for any work was not obtained, the Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Committee or Board shall determine in its reasonable judgment whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this Section 7.9 only if the Board has undertaken the architectural control functions under this Section 7.9, otherwise the Architectural Control Committee shall act.

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance with 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 control functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural control functions under this section, 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 Project, or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, or (3) institute legal proceedings to enforce compliance or completion, and to recover costs of enforcement, including attorneys' fees, and to recover costs of enforcement, including attorneys' fees.

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

**L. No Waiver of Future Approvals:** The in the Board or Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**M. Variances:** The Board may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines, including restrictions on height, size, floor area or placement of structure, or similar restrictions, when circumstances such as hardship,

aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Board, and become effective on adoption of a resolution by the Board. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Condominium.

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

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

**7.12. Clothes Lines:** There shall be no outside laundering or drying of clothes [except inside fenced patios with clothes to be hung below fence level so as not to be visible from streets or Common Area or other Condominiums. No draping of towels, carpets, or laundry or other such items over exterior railings shall be allowed.

**7.13. Power Equipment and Motor Vehicle Maintenance:** No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board (except for approved construction work being undertaken on a Residence). Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

**7.14. Liability of Owners for Damage to Common Area:** The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements caused by the Owner, or any Occupant for which the Owner is responsible, to the extent described in Section 5.1.A(2).

**7.15. Basketball Standards and Sports Apparatus:** No basketball apparatus or fixed sport apparatus shall be attached to the exterior surface of any Unit or any portion of the Common Area, nor shall any portable apparatus be used for playing basketball or other sports in the Project.

**7.16. Flags, Pennants, Banners, Etc.:** There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except by Declarant during the period Declarant is marketing the Project) that would be visible from the street, Common Area, or the other Units, except in conformance with Rules adopted by the Board or the Architectural Control Committee, and except for flags, banners and signs that are expressly permitted by statute. The Association may adopt Rules regarding the display of flags, banners and signs provided that such Rules shall be consistent with the then applicable laws.

**7.17. Water Bed Restrictions:** No water beds shall be permitted in the Project.

**7.18. Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept in any Unit or in any improvements constructed in any Unit, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

**7.19. Common Area Use:** Nothing shall be stored, grown, or displayed in the Common Area, including, without limitation, Exclusive Use Common Areas such as Decks that is not approved in advance by the Architectural Control Committee.

**7.20. Drainage:** No Owner, Member or Occupant shall do or cause anything to be done that would alter or interfere with the Project drainage patterns or block or alter the natural flow or engineered flow of surface water, or interfere with drainage patterns within the Project. Alterations to Project drainage facilities or drainage flow patterns shall require prior approval of the City.

**7.21. Owner's Right and Obligation to Inspect, Maintain and Repair:**

A. Except for those portions of the Project which the Association is required to inspect, maintain and repair in **Section 5.1**, each Condominium Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition, pursuant to and in accordance with the Homeowners Handbook. As provided in **Section 5.1.B**, the Association is to maintain, repair, replace (when necessary), the roofs of Residences, including maintenance and repair of gutters and downspouts and shall inspect, maintain, repair, paint, replace (when necessary) the exterior walls, siding, stucco and trim of Residences. Each Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke and/or carbon monoxide detectors, fire extinguishers and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings; all windows and doors of the Unit; all stairs and staircases of the Units.

Each Owner shall inspect and maintain, repair and replace any smoke and/or carbon monoxide detectors located in the Owner's Unit. The Association shall inspect, maintain and repair any automatic fire sprinkler heads located in any Unit. Each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. In addition, each Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items serving such Owner's Unit: garage interiors, garage doors, and garage door operating mechanics. In addition, each Owner shall have the improvements on the Owner's Unit periodically inspected for termites and immediately shall take appropriate corrective measures thereof.

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

C. Each Owner shall clean, maintain and repair the Exclusive Use Common Area Decks which are appurtenant to his or her Unit in a clean and neat condition at all times and shall maintain the landscaping and irrigation in any such areas and in the Common Area adjacent to its Unit pursuant to Rules adopted by the Association.

D. Each Owner shall inspect and maintain the improvements within his or her Unit and any landscaped areas and irrigation which the Owner is to maintain in accordance with the inspection and maintenance guidelines set forth in the Homeowners Handbook established by the Declarant and in accordance with the Association's Rules. A copy of the Homeowners Handbook shall be delivered by Declarant to each Owner when the Unit has closed escrow. Each Owner shall retain the Homeowners Handbook and take all appropriate actions to comply with and implement the Homeowners Handbook. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Homeowners Handbook, and all manufacturers' materials, to the transferee of the Unit on or before the date the Unit is transferred.

E. 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 Unit, the Owners shall inspect their Residences not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately notify the Board and take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of

Mold growth, and take such other prudent steps as may be appropriate to prevent leaks and Mold growth, or eliminate any existing Mold.

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

G. In the event an Owner fails to inspect and maintain his Unit or the Exclusive Use Common Areas Exclusive Use Common Areas which are appurtenant to his or her Unit that the Owner is to maintain in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice.

H. **Water Leaks:** In the event of any water leak or overflow from any pipes, connections, fixtures or devices situated within a Unit that damages any Common Area or any other Unit, the Owner and Occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include providing prompt notice to the Association of any such water leak or overflow and access to the Unit to inspect and to correct the problem and/or repair any such damage. The Responsible Owner shall immediately undertake repair and any other required remedial work to correct the water leak problem and reimburse the Association and any other Owner whose Unit is damaged because of such water leak or overflow for its, his or her repair costs and other damage arising out of such water leak or overflow, whether or not occasioned through the Owner's negligence, willful act, omission, or inadvertence, to the extent the cost is not covered by insurance maintained by the Association. The Association may levy a Reimbursement Charge against the Responsible Owner to recover the costs incurred by the Association arising from such water leak or overflow. If the Association's insurance covers the damage from such water leak or overflow, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner. The Association shall not be responsible for the costs or expenses for any such damage from water leak or overflow originating in a Unit to the extent that such damage is not covered by the Association's insurance. If a Unit Owner becomes aware of any potential problems or issues with respect to water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Common Area improvements.

**7.22. Fire Restrictions:** No Owner or other resident of the Project may store any flammable materials on any Exclusive Use Common Area. Further, no exterior fires shall be permitted in any Unit or on any Exclusive Use Common Area Deck; provided however that outdoor barbeques shall be allowed if permitted by the Association's Rules. Nothing may be done in any Condominium or in, on or to the Common Area that may impair or alter fire sprinklers within the Units or their source of water.

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

**7.24. Rights of Disabled:** Subject to Section 7.9, each Owner may modify his Unit and the route over the Common Area leading to the front door of his Unit, at his sole expense, to facilitate access to his Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code section 4760 or any other applicable law.

**7.25. Smoking Restrictions:** Smoking shall not be permitted in any of the Common Area, at any time.

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

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

A. Association Insurance: The Association shall obtain and maintain the following insurance:

(1) Property Insurance Coverage. The Association shall obtain a master hazard insurance policy insuring all improvements, equipment and fixtures on the Project including the Common Area. The Board shall determine whether such coverage will include the interior of the Units as originally constructed, including built-in or set-in appliances, cabinets, and floor coverings, but excluding additional improvements or upgrades added to the Unit Owner after completion of original construction. The Association's policy does not cover the personal property in Units and does not cover personal liability for damages or injuries occurring within the Units. The Board may determine that the master hazard insurance policy will insure all improvements, equipment and fixtures in the Project, which includes all of the Common Area and improvements therein, but with respect to the Unit interiors, the coverage extends only to the interior unfinished surfaces ("Bare Walls Coverage"). Under such Bare Walls insurance coverage the master hazard insurance policy maintained by the Association will not cover the interior improvements of the Units, such as, by way of example but not limited to, wall and floor coverings, cabinets, and built-in appliances, and will not cover the personal property in the Units, or the personal liability for damages or injuries occurring in the Unit. The Association's master hazard insurance policy shall include the following coverages:

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

(2) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code section 5800 and § 5805;

(3) workers' compensation insurance (statutory limits) to the extent required by law (or such greater amount as the Board deems necessary). All independent contractors who contract with the Association shall be required to carry appropriate general liability insurance, automobile liability insurance coverage and workers' compensation coverage, and shall indemnify the Association with respect to any claims from such independent contractor, or independent contractor's employees, with regards to claims for liability and workers' compensation claims from any independent contractor who performs any service for the Association. Independent contractors shall be required to carry a minimum of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate under the general liability requirement naming the Association as an additional insured for their work. Independent contractors shall also carry a minimum of \$1,000,000 combined single limit for auto liability covering all owned, hired and non-owned automobiles;

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

(5) flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(6) directors and officers liability insurance covering all past, present and future directors and officers of the Association, the amount of which shall at all times not be less than the minimum amounts required by California Civil Code sections 5800 and 5805, as amended from time to time, including any successor statutes;

(7) insurance against water damage, and liability for non-owned and hired automobiles;

(8) water damage insurance to the extent typically available from commercial carriers, if available at reasonable rates in the opinion of the Board.

(9) such other insurance as the Board in its discretion considers necessary or advisable.

**B. Amount, Term, Deductibles and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Housing and Urban Development ("HUD") or any successor to either of those entities [(except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in Section 8.1.A(10) above)]. If the FNMA, FHLMC or HUD requirements conflict, the more stringent requirement shall be met. If FNMA, FHLMC and HUD do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Sections 4.3.B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing. Owners responsible for causing damage are responsible for the amount of any deductible as provided in Section 5.1.A(2).

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

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

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

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

**F. Separate Owner's Insurance:** Each Owner shall insure his personal property and any improvements to the interior of the Unit that are not covered by the Association's insurance provided for in Section 8.1.A(1) or added by the Owner after completion of original construction. The insurance coverage carried by the Owner shall be for 100% of the current replacement cost of all improvements in the Owner's Unit not covered by the Association's policy. The Owner shall not obtain such insurance if the policy referred to in Section 8.1.A(1) will provide coverage for such improvements. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance. All Owners shall deliver a copy of the Owner's insurance policy to the Board, if requested to do so. The Association may establish Rules as to the reasonable limits of insurance to be carried by Unit Owners and other Occupants after consultation with an insurance consultant. All such insurance that is individually carried by a Unit Owner shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the mortgagees of such Unit.

**G. Copies of Policies; Notice to Members.** The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 8.1.A(1). The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by California Civil Code section 5300(b)(9) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in California Civil Code section 5300(b)(9), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

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

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

**J. Authority of the Board to Change Insurance Requirements:** The Board, by unanimous vote at a meeting, notice of which was given to all Owners, may change the insurance requirements from "bare walls coverage" to "all-in coverage", or from "all-in coverage" to "bare walls coverage", and to make consistent changes in the requirements for individual owner's insurance. In such case the Declaration need not be amended, provided all Owners are notified of the change. The Association shall periodically (and not less than once every three (3) years) review all insurance policies to determine the adequacy of the coverage and to adjust the policies accordingly.

**8.2. Damage or Destruction:** If Project improvements (including a Residence) are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 4.4, and the Board, without such approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

**A. Costs of Damage – Condominiums:** In the case of damage or destruction of a Unit, whether by fire, earthquake or other causes, the Owner of that Condominium Unit shall be responsible for the costs of repair or reconstruction that is not covered by the Association's insurance policies or is within the deductible amount. If an Owner fails to pay the costs of such repair or reconstruction, the Association may elect to pay for the uninsured portion of the cost or deductible amount and shall have the right to assess the Owner(s) for the cost thereof as a Reimbursement



Charge and to enforce the Reimbursement Charge as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Condominium Unit equal in amount to such preemption pursuant to Section 4.3, and shall enforce such Assessment in accordance with Sections 4.3 and 5.2.F hereof. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

**B. Process For Repair or Reconstruction:** If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the Depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially 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 are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of the 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 repair or reconstruction has been or is being made the basis for the disbursement of any funds in any previous or then pending application;

(5) that the amount held by the Depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction; and,

(6) that mechanics' lien releases have been obtained from those eligible to file lien claims.

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

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

In the event the work required to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in Sections 7.21, 5.1.A, or 5.1.B, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to Sections 7.21, 5.1.A or 5.1.B. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to Section 9.15.E.

If the Association undertakes any work which Section 7.21 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Condominium of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the Residence or the Condominium

involved. Such Assessment shall be a lien upon the Condominium of the Owner and may be foreclosed, as set forth in Section 4.9.

**C. Process If Repair or Reconstruction Not Undertaken:** If the improvements are not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among the Owners of the damaged Units and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the Bar Association of the County.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to Section 9.15.E, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgages.

If, as a result of the destruction or partial destruction of the Project, and a decision is made not to repair or reconstruct the Project, the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgages in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this Section 8.2.C, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code section 4610, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this Section 8.2.C, provided this right is exercised within thirty (30) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. Such notice shall be given by the to all Owners, in writing, within thirty (30) days of receipt by the Association of such offer. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective Mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

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

In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section 8.2. Owners shall be represented by themselves or their attorneys in any condemnation actions involving Units.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code section 4610 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in Section 8.2.

**8.4. Condemnation of Exclusive Use Common Area:** If there is a taking of all or any portion of an Exclusive Use Common Area, the award in condemnation shall be paid to the Owner of the Condominium to which the taken Exclusive Use Common Area was appurtenant; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

**8.5. Portions of Awards in Condemnation Not Compensatory for Value of Real Property:** Those portions of awards in condemnation that do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

#### **ARTICLE IX. GENERAL PROVISIONS**

**9.1. Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Governing Documents, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Failure by the Association to enforce the Governing Documents shall not be deemed to constitute approval of or consent to any violation or failure to comply with the Governing Documents.

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

**9.3. Term:** Subject to Section 9.4, the covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, or the City, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless (i) an instrument in writing, signed by a majority of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same and (ii) the prior written consent of the City Manager for the changes or termination of this Declaration is obtained.

#### **9.4. Amendments:**

**A. Amendment by Declarant:** Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Project, Declarant may amend or terminate this Declaration, with the prior written consent of the City Manager, by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any

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

**B. Amendment by Members:** After sale of the first Condominium, this Declaration may be amended, with the prior written consent of the City Manager, only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the Cal DRE. However, the percentage of voting power necessary to amend a specific Section shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that Section. Any amendment must be certified in writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County.

**C. Super-Majority Required for Certain Amendments:** Notwithstanding anything to the contrary contained in this Declaration, Sections 9.4.C, 5.1.A, 5.1.B, 7.1, 9.6, 9.7, 9.8 and 9.15 shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

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

**E. Amendments Regarding Initiation of Construction Defect Claims:** Notwithstanding anything to the contrary contained in this Declaration, this Section 9.4.E and Section 9.15 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

**F. Agreements Among Owners:** In any situation where agreement between or among Owners is required, agreement or consent shall not be withheld unreasonably.

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

Declarant (so long as Declarant is the sole Owner of the Project) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the City Engineer (in the case of a subdivision map or parcel map). The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction. The modification may also be made by lot line adjustment, if more appropriate.

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

**A. Amendments:**

(1) Amendments of a material adverse nature to First Lenders require the approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned);

(2) any action to terminate the legal status of the Project, or to use insurance proceeds for any purpose other than to rebuild, requires approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned); and,

(3) Implied approval may be assumed when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

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

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

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

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

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

**C. Reserves:** The Association shall establish and maintain a Reserve Fund for replacements and a general operating reserve sufficient in amount to satisfy the minimum amounts necessary to comply with the requirements of FNMA and FHLMC.

**D. First Lenders Rights Confirmed:** Any First Lender who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue more than six (6) months prior to the time such First Lender or purchaser at a Foreclosure takes title to the Condominium, except for fees or costs related to the collection of the unpaid Assessments, claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

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

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

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

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

**C.** Prevent Declarant from conducting on the Project (except within Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of the Project as Condominiums by sale, lease or otherwise (including use of one (1) or more Condominiums as a sales office or model home); or

**D.** Prevent Declarant from maintaining or displaying such sign(s), pennants, banners and flag(s) anywhere in the Project (except within Units owned by others) as may be necessary for the sale, lease or disposition thereof for the duration of Declarant's marketing; or,

**E.** Subject Declarant to the architectural control provisions of Section 7.9 for construction of any Residence or other improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project, and, until then, this Section shall not be amended without Declarant's consent.

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

**9.8. Termination of Any Responsibility of Declarant and Acceptance of Obligations by Association:** In the event Declarant shall assign or convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant, shall thereafter be obligated to perform all such duties and obligations of the Declarant.

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

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

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

**9.11. Inspection and Assumption of Maintenance Responsibility for Common Area Improvements:** The Association's inspection and assumption of maintenance responsibility for the Common Area Improvements shall be determined in accordance with the following procedures:

**A. Walk-Through Inspection:** On completion of all or any portion of the Common Area Improvements in the Project ("Common Improvements"), Declarant shall notify the Board of Directors of the Association in writing. Within five (5) business days of the notice or such later date as is agreeable to the parties, representatives of the Association and Declarant shall meet for the purpose of inspecting the Common Improvements and identifying any uncompleted or incorrectly completed items. In addition to representatives of the Board and the Declarant, the inspectors may include an inspector who is under contract to the Association to participate in the inspection. With respect to those items that the parties agree need to be completed or corrected, Declarant shall have a reasonable time thereafter to complete or correct the items ("Punch List"). The results of the inspection shall be noted in a written document ("Inspection Report"), which document shall be dated and signed by all of the inspectors, and one duplicate original shall be retained by the Association, and one shall be retained by the Declarant.

**B. Assumption of Responsibility for Maintenance of Common Area Improvements:** Upon completion of such an inspection, as evidenced by the dated and signed Inspection Report, all obligations and duties dictated by this Declaration for the Common Areas covered by the Inspection Report shall be assumed by the Association, and as of the date of the Inspection Report, the Association accepts the obligations and duties required by this Declaration. Any Punch List items noted on the Inspection Report shall not cause a delay of the Association's acceptance of the obligations and duties required by this Declaration, and the assumption of responsibility for maintenance of the Common Area shall occur as of the date of the Inspection Report.

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

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing pursuant to Board resolution that it approves the release of the Common Area Bond and shall execute any other documents as may be necessary to effect the release of the Common Area Bond. The Association shall not condition its approval of the release of the Common Area Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement (Cal DRE Form RE 611A)

attached to the Common Area Bond. If the Common Area improvements have been completed, a notice of completion has been filed, and sixty (60) days have passed without the filing of a mechanics' lien claim, the Association shall authorize and direct the escrow holder holding the Common Area Bond to release the Common Area Bond. If the Association fails to authorize and direct the release of the Common Area Bond within the forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**9.13. Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments:** Where the Association is the obligee under a bond or other arrangement (hereafter "Assessment Bond") to secure performance of the commitment of Declarant to pay Assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Assessment Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Assessment Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Assessment Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

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

If the Association delivers to the escrow holder of the Assessment Bond and to Declarant a demand for remittance of the Assessment Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Assessment Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the Declarant's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow holder of the Assessment Bond, which shall be in the form approved by the Cal DRE, with respect to the holding of the Assessment Bond, the return or remittance of the Assessment Bond and other disposition of matters set forth in said escrow instructions with respect to the Assessment Bond. If the Association fails to authorize and direct the release of the Assessment Bond within the forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**9.14. Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Unit to any person of a specified race, sex, sexual orientation, gender, gender identity, gender expression, age, marital status, color, religion, ancestry, national origin, familial status, source of income or disability of that person.



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

**A. Claims for Declaratory Relief or Enforcement of Project Documents:** Prior to the filing of an enforcement action as defined in Civil Code section 5925, for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages, the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code sections 5925-5960. The Board shall comply with the requirements of California Civil Code section 5965 by providing Members of the Association annually with a summary of the provisions of Article 3 (commencing with California Civil Code section 5925) of Chapter 10 of the California Civil Code, including the following language: "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the California Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law".

**B. Design or Construction Defect Claims:** Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in California Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with California Civil Code sections 895 through 945.5, and California Civil Code section 6000, as such Sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in California Civil Code sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the pre-litigation procedures of California Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in California Civil Code section 6150 and/or California Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

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

If the Claim is not resolved by and pursuant to the pre-litigation procedures of California Civil Code sections 910 through 938, subject to the provisions of California Civil Code section 6000, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of Section 9.15.D of this Declaration (Judicial Reference) or Section 9.15.E of this Declaration (Arbitration of Disputes). **WAIVER OF JURY TRIAL: DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF THE PROPERTY, THE ASSOCIATION (USE IF THE ASSOCIATION TAKES TITLE TO SOME OF THE COMMON AREA) AND EACH OWNER AGREE (i) TO HAVE ANY DESIGN OR CONSTRUCTION DISPUTE DECIDED BY JUDICIAL REFERENCE AS PROVIDED HEREIN, OR BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (ii) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DESIGN OR CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF ANY PARTY REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO DO SO.**

**C. Notices to Members of Legal Proceedings Against Declarant.** In accordance with California Civil Code section 6150, at least thirty (30) days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to the Common Areas, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the

Common Areas or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member specifying each of the following:

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

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

**D. Judicial Reference for Certain Disputes:** For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of California Civil Code sections 895 through 938, California Civil Code section 6000 and California Civil Code section 6000, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) If submission of a disputed matter referenced in this Section 9.15.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure Section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with Section 9.15.E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code sections 5925-5960 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code sections 5925-5960, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under Sections 9.12 and 9.13 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the Assessment Bond or Common Area Bond or other security shall, at the request of either party, be submitted to arbitration pursuant to Section 9.15.E of this Declaration.

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

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

(2) a neutral and impartial individual with at least ten (10) years' experience in real estate construction arbitration shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §1297.121 of the California Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the California Code of Civil Procedure;

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

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

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

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

(7) the arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error;

(8) a judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement;

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code sections 6150, 6000 and 6100;

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

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

(12) **ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE RELATING TO OR BASED UPON A CLAIM FOR DEFECTS IN DESIGN OR CONSTRUCTION OF IMPROVEMENTS WITHIN THE PROJECT DECIDED BY JUDICIAL REFERENCE AS PROVIDED IN SECTION 9.17.D, AND TO HAVE ANY DISPUTE RELATING TO OR BASED UPON CLAIMS FOR DECLARATORY RELIEF OR ENFORCEMENT OF THE GOVERNING DOCUMENTS DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND AS PROVIDED IN SECTION 9.15.E. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "JUDICIAL REFERENCE FOR CERTAIN DISPUTES" PROVISION (SECTION 9.15.D), AND THE "ARBITRATION OF DISPUTES" (SECTION 9.15.E) PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.**

**9.16. Power of Attorney:** Each Owner, by accepting and recording a grant deed to a Condominium in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project, as Owner's attorney-in-fact, for Owner and for each of Owner's mortgagees, optionees, Owners, Occupants, 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 or Map, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Condominium

Plan or Map into compliance with any city, county, state or federal laws or regulations. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described in this Section.

**9.17. City Requirements:**

A. No provision in this Declaration required by the City may be removed or amended without first obtaining the approval of the City Manager of the City. The City shall be a third party beneficiary of this declaration and shall have the authority but not the obligation to enforce the provisions of this Declaration.

B. **Transportation Demand Management (TDM) Plan.** The Project is subject to a 955 Woodside Road Transportation Demand Management (TDM) Plan approved by the City (the TDM Plan) as a condition of approval for the Project. The Project (and each portion thereof) and every Owner and Occupant of the Project shall be subject to and shall abide by and satisfy each and all of the provisions and obligations contained in the TDM Plan. The TDM plan requires funding and resources to implement compliance management with applicable requirements of any condition of approval enacted by City. To ensure the success of the TDM Program, the Declarant and the Project's Association shall establish mechanisms to assure the TDM Program's perpetuity. The obligations of the TDM program shall run with the land of the Project and each Unit in the project. The Association and each Owner and Occupant of a Unit shall be subject to, abide with, and satisfy each and all the provisions and obligations contained in the TDM program, including any obligation to provide funding and resources to implement the TDM Program and comply with all requirements of associated conditions of approval imposed by the City.

The primary purpose of the TDM Program is to reduce the number of vehicle trips to and from the Project by use of carpools, cycling, walking, increased telecommuting, and maintenance of guest bicycle parking and bicycle fix-it repair station. Programmatic TDM measures include designating an Association TDM Coordinator, commuter resource and incentives marketing and communications, distributing the commuter resource flyers, an annual resident commuter survey, and City report.

The Association shall be the responsible party for implementing the TDM Program measures. A copy of the TDM Program for the Project shall be on file with the City Clerk of the City. The Association shall engage a knowledgeable person to act as the TDM Coordinator for the Project, who shall be an individual knowledgeable about the transportation options available and responsible for administering the various transportation programs of the TDM Program on an ongoing basis [familiar with sustainable transportation options to provide guidance on trip planning or answer questions about options available and coordinate annual monitoring activities and reports to City]. The Association shall provide the City with written notification as to the identification of this TDM Coordinator.

The costs to implement and operate the TDM Program shall be borne by the Association, which shall be included in the Association's annual proforma operating budget as described in Section 5.1.I. The costs of the TDM Program shall be allocated among the Units equally as part of the Association's Common Expenses. The requirements of the TDM Program, including the duties of the TDM coordinator, may be modified from time to time with the consent of the Association and the City.

The Board shall have the authority to make such modifications on behalf of the Association, and the consent of the Members shall not be required unless mandated by law. The Association shall provide each Owner with a written notice on an annual basis - along with the Annual Budget Report delivered by the Association to the Owners - as to the existence of and implementation of the TDM Program. Each Owner shall provide a notice to each tenant who rents a unit from that owner a written notice on an annual basis as to the existence of and implementation of the TDM Program.

C. **Estimate of Costs of Maintenance.** Declarant shall provide the City for review an estimate of costs of maintenance for each of the activities identified in this Declaration after Cal DRE has approved the budget for Assessments for maintaining these activities, including all the Common Areas.

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

**9.19. Articles and Sections:** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles or sections are to Articles, and Sections of this Declaration.


**9.20. Priorities and Inconsistencies:** If there are conflicts or inconsistencies between the Governing Documents, then the provisions of this Declaration shall prevail.

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

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

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this 5TH day of November, 2024

955 Woodside Rd LLC, a California limited liability company

By:   
Name: Samir Sharma  
Its: Authorized Signor

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

COUNTY OF SANTA CLARA

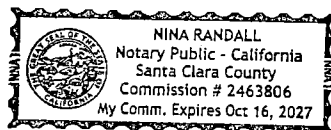
)  
) ss.  
)

On this 5<sup>TH</sup> day of NOVEMBER, 2024, before me, NINA RANDALL, a Notary Public, personally appeared SAMIR SHARMA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument, and acknowledged to me that (he) /she /they executed the same in (his) /her /their authorized capacity(ies), and that by (his) /her /their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SEAL



Nina Randall  
Notary Public, State of California

## **CONSENT AND SUBORDINATION**

THE UNDERSIGNED BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST RECORDED MARCH 24, 2022 SERIES NO. 2022-025421, OFFICIAL RECORDS, HEREBY CONSENTS AND SUBORDINATES TO ALL THE PROVISIONS CONTAINED IN THE DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR THE 955 WOODSIDE ROAD CONDOMINIUMS TO WHICH THIS CONSENT AND SUBORDINATION IS ATTACHED AND AGREES THAT THE LIEN OF THE DEED OF TRUST SHALL BE JUNIOR AND SUBORDINATE AND SUBJECT TO SAID DECLARATION.

COMMUNITY BANK OF THE BAY

BY: 

NAME: Tommy Rodriguez

ITS: Senior Vice President, Community Bank of the Bay



## ACKNOWLEDGMENT

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

County of Alameda

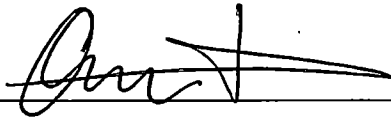
On November 5th 2024 before me, Omar Ayala / Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)

