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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

388 FULTON

NOTICE: ALL DISPUTES BETWEEN THE ASSOCIATION AND OR OWNERS AND THE DECLARANT AT THIS COMMUNITY ARE SUBJECT TO MANDATORY BINDING ARBITRATION. SECTION 15.5 OF THIS DECLARATION CONTAINS A MANDATORY BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ACCORDING TO THIS PROVISION, ALL DISPUTES BETWEEN OWNERS OR THE ASSOCIATION AND THE DEVELOPER ARE SUBJECT TO ARBITRATION RATHER THAN A TRIAL IN COURT. EACH OWNER, BY ACCEPTING FEE TITLE TO A CONDOMINIUM, AND THE ASSOCIATION, BY ACCEPTING FEE TITLE TO THE ASSOCIATION PROPERTY, IS AGREEING TO RESOLVE DISPUTES IN ARBITRATION ACCORDING TO THE PROVISIONS SET FORTH IN SECTION 15.5. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

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OF
388 FULTON

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF 388 FULTON ("**Declaration**") is made this 2nd day of June, 2016 by 388 FULTON STREET OWNER LLC, a Delaware limited liability company ("**Declarant**") with reference to the facts set forth below.

RECITALS

All initially capitalized terms used but not defined in the Recitals are defined in **ARTICLE 1**.

A. __Property Owned by Declarant__. Declarant is the owner of the real property situated in the City and County of San Francisco, State of California, more particularly described on **Exhibit "A"** ("**Property**").

B. __Nature of Community__. Declarant intends to establish a plan of condominium ownership and to develop the Property as a condominium Community within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 4125, to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, *et seq.)* and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 4000 *et seq.* To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

C __Description of Community__ Declarant intends to develop a mixed use residential and commercial development on the Property consisting of sixty-nine (69) Residential Condominiums and a maximum of five (5) Commercial Condominiums. The Commercial Area will consist of Grid Blocks which may be conveyed as either one, two, three, four or five Commercial Condominiums. If the Commercial Area is conveyed as more than one Condominium, the boundaries of the Condominiums shall be determined by the number of adjacent Grid Blocks conveyed If the Commercial Area is conveyed as a single Commercial Condominium, that Condominium shall consist of all of the Grid Blocks within the Commercial Area All Owners of a Condominium will receive title to a Unit plus an undivided fractional interest as tenant in common to the Common Area. In addition, Owners of a Condominium may receive the exclusive right of use and occupancy of a portion of the Association Property designated as an Exclusive Use Area, all as shown on the Condominium Plan Each Residential Owner will also receive certain easements for ingress, egress, use and enjoyment over the Association Property designated on the Condominium Plan and the Commercial Owners will receive certain easements for ingress, egress, use and enjoyment over portions of the Association Property specified for use by the Commercial Owners in the Governing Documents. Such easements are more particularly described in this Declaration and the deeds conveying the Units to the Owners. Each Condominium shall have appurtenant to it a membership in 388 Fulton Owners Association, a California nonprofit mutual benefit corporation ("**Association**").

DECLARATION

NOW THEREFORE, Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Section 4000 *et seq.* for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and appearance of the Property All of the limitations, covenants, conditions, restrictions, easements, liens and charges are enforceable equitable servitudes and shall run with the land, shall be binding on and inure to the benefit of Declarant and all Persons having or acquiring any right, title or interest in the Property. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 5975.

ARTICLE 1
DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this ARTICLE shall, for all purposes of this Declaration, have the meanings specified below

1.1 "**Additional Charges**" means costs, fees, charges and expenditures, including without limitation, the following.

1.1.1 Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise,

1.1.2 Administrative fees or late charges in an amount to be fixed by the Association in accordance with California Civil Code Section 5650 to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by Applicable Laws;

1.1.3 Costs of suit and court costs, actually incurred, as are allowed by the court;

1.1.4 Interest at the Applicable Rate; and

1.1.5 Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments.

1.2 "**Affiliate**" means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person. "Control" as used herein is defined as possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

1.3 "**Applicable Laws**" means the Governmental Entitlements and any law, regulation, rule, order and ordinance which is applicable to the Community now in effect or as hereafter promulgated.

1.4 "**Applicable Rate**" means the rate of interest chargeable under this Declaration equal to the rate established by the Association from time to time, but not to exceed the maximum rate allowed by Applicable Laws.

1.5 "**Architectural Committee**" means the committee which may be appointed by the Board pursuant to **ARTICLE 8**

1.6 "**Architectural Guidelines**" means the design criteria adopted by the Board pursuant to **ARTICLE 8**.

1.7 "**Articles**" means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

1.8 "**Assessments**" means the assessments levied to cover the Common Expenses under **ARTICLE 5** or other Assessments permitted to be levied by the Association under the Governing Documents which include:

1.8.1 "**Capital Improvement Assessments**" means the Capital Improvement Assessments that are levied by the Association pursuant to **Section 5.6**.

1.8.2 "**Compliance Assessments**" means the Compliance Assessments that are levied by the Association pursuant to **Section 5.7**.

1.8.3 "**Regular Assessments**" means the Regular Assessments that are levied by the Association pursuant to **Section 5.4**.

1.8.4 "**Special Assessments**" means the Special Assessments that are levied by the Association pursuant to **Section 5.5**.

1.9 "**Association**" means 388 Fulton Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.10 "**Association Issue(s)**" means those matters and issues which require a vote of all Owners, which for purposes of the Governing Documents means any matter which is not a Residential Owner Issue.

1.11 "**Association Maintenance Manual**" means the manual or guide which may be prepared by Declarant or its consultants and provided to the Association, specifying obligations for maintenance of the Association Property, as updated and amended from time to time.

1.12 "**Association Property**" means all real property owned from time to time in fee title or as an easement by the Association. The Association Property shall extend indefinitely upwards and downward to the center of the earth, excepting therefrom areas that are Units or Common Area, and its lateral boundaries shall be as described on the Condominium Plan. Upon conveyance to the Association, which shall occur prior to or concurrently with the conveyance of the first Condominium to an Owner under a Public Report, the Association Property will consist of the real property identified as Association Property on **Exhibit "A"**

1.13 "**Association Rules**" or "Rules" means the rules and regulations adopted by the Board from time to time.

1.14 "**Bicycle Parking Area**" means the portion of the Association Property containing bicycle racks for use by Residents.

1.15 "**Board**" means the board of directors of the Association.

1.16 "**BRE**" means the California Bureau of Real Estate.

1.17 "**Budget**" means the budget for the Association, which sets forth the Common Expenses to be allocated among the Owners. The Budget consists of (a) a General Budget ("**General Budget**") which sets forth the portion of the Common Expenses allocable to both the Residential Owners and the Commercial Owners, and (b) a residential budget which sets forth the portion of the Common Expenses allocable only to the Residential Owners ("**Residential Budget**").

1.18 "**Bylaws**" means the bylaws of the Association as they may be amended from time to time, which are or shall be adopted by the Board.

1.19 "**Building**" means the building within which the Condominiums and/or other Improvements are located.

1.20 "**City**" means the City of San Francisco, California.

1.21 "**Commercial Area**" means the area consisting of Grid Blocks, designated as the Commercial Area on the Condominium Plan. The Commercial Area may be conveyed as one, two, three, four or five Commercial Condominiums, the boundaries of which are determined by the number of Grid Blocks conveyed.

1.22 "**Commercial Condominium**" means a condominium comprised of a Commercial Unit and an undivided interest in the Common Area.

1.23 "**Commercial Owner**" refers individually or collectively, as the context requires, to the record owner, whether one or more Persons, including Declarant, of a Commercial Condominium, but excluding those having such interest merely as security for the performance of an obligation.

1.24 "**Commercial Share**" means each Commercial Owner's share of Assessments which shall be a fraction (a) the numerator of which shall be the number of Grid Blocks of such Owner's Commercial Unit, and (b) the denominator of which is the number of Grid Blocks within the Commercial Area. Upon the initial conveyance of less than all of the Commercial Area as a separate Condominium, the Commercial Share of that Condominium and the remaining Commercial Area shall be determined by the Declarant depending on the number of Grid Blocks conveyed. Upon conveyance by Declarant of a Commercial Condominium within the Commercial Area to an Owner, Declarant shall designate such Owner's Commercial Share in the records of the Association

1.25 "**Commercial Unit**" means the contiguous Grid Blocks within the Commercial Area conveyed to an Owner as a separate Commercial Unit

1.26 "**Common Area**" means the three dimensional airspace envelope, the lower vertical boundary and upper vertical boundary of which are described on the Condominium Plan, which Common Area is owned in 1/74th undivided interests by the Owners. The

Commercial Area shall be deemed to own five (5) such undivided interests in the Common Area, regardless of whether the Commercial Area is conveyed as two, three, four or five Commercial Units Because a portion of the Commercial Area is not contiguous to the balance of the Commercial Area, the minimum number of Commercial Units is two (2). If the Commercial Area is conveyed as two Commercial Units, the Owner of the larger of the two Condominiums shall own a 3/74th undivided interest in the Common Area and the Owner of the smaller of the two Commercial Units shall own a 2/74th undivided interest in the Common Area. If the Commercial Area is sold as three (3) Commercial Units, the smallest Commercial Unit shall own a 1/74th undivided interest in the Common Area and the other two (2) Commercial Units shall own a 2/74th undivided interest in the Common Area. If the Commercial Area is sold as four (4) Commercial Units, three (3) Commercial Units shall own a 1/74th undivided interest in the Common Area and the largest Commercial Unit shall own a 2/74th undivided interest in the Common Area. The voting rights and Allocable Share of a Commercial Owner shall be determined by the number of Grid Blocks owned, not by the portion of the undivided interest in the Common Area owned by such Commercial Owner.

1.27 "**Common Expenses**" means the actual and estimated costs and expenses incurred or to be incurred by the Association including without limitation the following:

1.27.1 expenses for maintenance, management, operation, inspection, repair and replacement of the Association Property required under the Governing Documents in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents;

1.27.2 expenses incurred in performing the duties and obligations of the Association set forth in the Governing Documents;

1.27.3 expenses of any services provided from time to time,

1.27.4 expenses incurred in complying with the Governmental Entitlements and Applicable Laws;

1.27.5 expenses incurred in administering any committees formed by the Association;

1.27.6 expenses incurred to cover due but unpaid Assessments;

1.27.7 expenses for management and administration of the Association, including, without limitation, compensation paid by the Association to managers, accountants, attorneys, architects and consultants;

1.27.8 expenses incurred in maintaining the legal status and qualifications of the Association as an entity in good standing and entitled to do business in the State of California;

1.27.9 expenses of any inspections required or deemed appropriate by the Association;

1.27.10 expenses of operating and maintaining any Utility Facilities, trash pickup and disposal, elevator, landscaping, and other services benefiting the Owners and their Units to the extent such services are paid for by the Association;

1.27.11 expenses of insurance and fidelity bonds maintained by the Association;

1.27.12 reasonable reserves as deemed appropriate by the Association or otherwise required to be maintained under the Governing Documents or Applicable Laws;

1.27.13 taxes and assessments incurred by the Association;

1.27.14 expenses incurred by the Association for the discharge of any lien or encumbrance levied against the Association Property or portions thereof

1.28 "**Common Roof Deck**" means the deck area situated on the roof of the Building for use by all Residential Occupants.

1.29 "**Community**" means all of the Property together with all Improvements situated thereon.

1.30 "**Community Handbook**" means the handbook which may be adopted by the Board containing Rules and Regulations, Architectural Guidelines, Election Rules and other information regarding the Community.

1.31 "**Condominium**" means an estate as defined in California Civil Code Section 4125 consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan and/or in the deed conveying the Condominium.

1.32 "**Condominium Plan**" means (i) the condominium plan recorded pursuant to California Civil Code Section 4285, and any amendments to that plan, and (ii) each Supplementary Condominium Plan, if any, recorded pursuant to the provisions of this Declaration.

1.33 "**County**" means the County of San Francisco, California.

1.34 "**Declarant**" means 388 FULTON STREET OWNER LLC, a Delaware limited liability company, and shall include those successors and assigns of Declarant who acquire or hold title to any part or all of the Property for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant's rights in an Assignment of Declarant's Rights ("**Assignment of Declarant's Rights**") executed by the Declarant, or a successor Declarant, and recorded in the Official Records assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale and a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidation sale of stocks or assets, operation of law or otherwise

1.35 "**Declarant Party**" means Declarant and its current and future Affiliates, and the respective current and future directors, officers, employees, members, managers, partners, trustees, trust beneficiaries, agents, and representatives, of Declarant

1.36 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions of 388 Fulton, as it may from time to time be amended or supplemented.

1.37 "**Designated Exclusive Use Easement, Walls or Floors**" means those portions of the Association Property consisting of corridors, elevator lobbies, entryways, walls, floors and internal equipment located within such walls or floors such as plumbing, ventilating and electrical wires, which are located between two (2) or more adjacent Residential Units (either horizontally or vertically) over which an Exclusive Use Easement shall be assigned by the Declarant or the Association if an Owner acquires fee title to two (2) or more adjacent Residential Units separated by such wall or floor or surrounding such corridor, elevator lobby or entryway, subject to compliance with the requirements of this Declaration.

1.38 "**Dividing Wall(s)**" means the interior walls (including doors) which separate a Residential Unit from an adjoining Residential Unit or from any Association Property. If any Residential Units are combined as authorized under this Declaration, any portion of any wall separating the combined Residential Units shall not be a Dividing Wall during the period that the Residential Units are combined. Any Dividing Wall that is a load bearing wall or shear wall is a part of the Association Property.

1.39 "**Eligible Holder**" means any First Mortgagee who has given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the First Mortgage and requesting written notice of any or all of the events to which such Eligible Holder is entitled as specified in this Declaration.

1.40 "**Emergency**" means any situation, condition or event, which threatens imminent damage or injury to Persons or property.

1.41 "**Exclusive Use Deck Areas**" means those portions of the Association Property designated as "Exclusive Use Deck Areas" on the Condominium Plan over which an exclusive use easement has been reserved for the benefit of certain Owners and which is appurtenant to such Owner's Unit.

1.42 "**Exclusive Use Area or Exclusive Use Easement**" means those portions of the Association Property over which exclusive easements are reserved and granted for the benefit of certain Owners in accordance with California Civil Code Section 4145, as described in this Declaration.

1.43 "**Federal Agencies**" refers collectively to one or more of the following agencies and the following letter designation for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation and any successors to such agencies: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association) and GNMA (Government National Mortgage Association).

1.44 "**Final Map**" means the final subdivision or parcel map covering the Community and any corrections, modifications and/or lot line adjustments to such Final Map.

1.45 "**First Mortgage**" means a Mortgage that is first in priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

1.46 "First Mortgagee" means the Mortgagee of a First Mortgage.

1.47 "First Purchaser" means the Owner of a Condominium who acquired the Condominium from Declarant under authority of a Public Report

1.48 "Fiscal Year" means the fiscal accounting and reporting period of the Association selected by the Board

1.49 "Fit and Finish Warranty" means the one year limited warranty provided by Declarant for the fit and finish of certain components of the Residential Units.

1.50 "Governing Documents" means, collectively, this Declaration, the Articles, Bylaws, Architectural Guidelines, the Condominium Plan, the Association Rules, Supplementary Declarations and amendments.

1.51 "Governmental Agencies" means the City and County and any other federal, state, local or municipal governmental entity or quasi-governmental entity (or any departmental agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Property

1.52 "Governmental Entitlements" means any entitlements, permits and authorizations relating to the Property and any conditions imposed in connection with such entitlements, permits and authorizations issued or imposed by any Governmental Agencies.

1.53 "Grid Blocks" means the two-dimensional grid blocks shown on the Condominium Plan, each Grid Block containing a length and width as shown on the Condominium Plan.

1.54 "Hazardous Materials" means any biologically or chemically active, or toxic or hazardous waste or materials as defined or regulated by Applicable Laws. Without limitation, "Hazardous Materials" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq*.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq* ; any applicable state, local or federal laws, and the regulations adapted under these Acts.

1.55 "Improvements" means all structures or improvements of every type or kind installed or erected on the Property or an alteration or modification to a Unit, Exclusive Use Easement or Association Property including, without limitation, room partitions, structural alterations to any portion of a Unit or any Association Property surrounding the Unit, any addition or alteration to a Unit that causes penetration beyond the unfinished surface of the walls, ceilings or floor of a Unit or impacts or affects in any manner any Association Property, changes of level, grade or drainage pattern of any Exclusive Use Easement, patio covers, screening walls, skylights, stairs, window tinting, plantings and potted plants, paving, tiling or other covering of any Deck; Utility Facilities, poles and signs; and all other structures or improvements of every type and kind installed or erected on the Property.

1.56 "Institutional Mortgagee" means (a) a First Mortgagee that is a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under Applicable Laws, (b) an insurer or governmental guarantor of a First Mortgage; (c) a First Mortgagee which is a Federal or State Agency, or (d) any other institution specified by the

Board in a recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Condominium.

1.57 "**Invitee**" means any Person whose presence within the Community is approved by or is at the request of a particular Owner, including, without limitation, Occupants, agents, contractors and the family, guests, patrons, employees or licensees of Owners or Occupants.

1.58 "**Lease**" means each lease, license or other agreement whereby a Person acquires rights to use or occupy any portion of a Unit for a specified term.

1.59 "**Lessee**" means the Occupant of a unit pursuant to a Lease

1.60 "**Maintenance Obligations**" means the Association's obligations and each Owner's obligations to perform (a) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively, as applicable; (b) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property and Units, as applicable, and (c) any maintenance obligations imposed by the Governing Documents or any Governmental Agency.

1.61 "**Maintenance Responsibility Chart**" means **Exhibit "C"** attached hereto and incorporated herein which designates the components of the Community to be maintained by the Association and the Owners, respectively. The Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration.

1.62 "**Majority of Commercial Owners**" means Commercial Owners owning more than fifty percent (50%) of the Grid Blocks.

1.63 "**Member**" means every Person who holds a membership in the Association.

1.64 "**Mortgage**" means a recorded mortgage or deed of trust encumbering a Condominium in the Community

1.65 "**Mortgagee**" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.66 "**Notice and Hearing**" means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

1.67 "**Notice of Delinquent Assessments**" has the meaning set forth in **Section 5.14.4**

1.68 "**Occupant**" means each Owner, Lessee and any other Person that is entitled to occupy from time to time all or a portion of a Unit, whether as Owner or pursuant to ownership, lease, sublease, license or other similar agreement.

1.69 "**Official Records**" means the official public records of the County Recorder

1.70 "**Operating Rules**" means those Association Rules that constitute an operating rule under California Civil Code Section 4340 *et seq.*

1.71 "Owner" means the record owner, whether one (1) or more Persons, including Declarant, of any Condominium excluding those having such interest merely as security for the performance of an obligation.

1.72 "Owner Maintenance Manual" means the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Units by the Owners, as updated and amended from time to time.

1.73 "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, a trustee or other legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.74 "Plans and Specifications" shall have the meaning set forth in **Section 8.3.**

1.75 "Pollution Control Devices" means those devices installed within the Community installed to satisfy stormwater pollution requirements.

1.76 "Property" means all of the real property described in **Exhibit "A."**

1.77 "Public Report" means the Final Subdivision Public Report issued by the BRE for the Community

1.78 "Resident" means any Occupant of a Residential Condominium.

1.79 "Residential Condominium" means a condominium comprised of a Residential Unit and an undivided interest in the Common Area.

1.80 "Residential Facilities" means all of the facilities for the use and enjoyment of the Residential Owners and their invitees, situated within the Association Property, including, without limitation, the Common Roof Deck, outdoor television and sound system, courtyard, Bicycle Parking Area and residential lobby.

1.81 "Residential Owner(s)" means individually or collectively, as the context requires, the Owner(s), whether one or more Person(s), including Declarant, of the Residential Condominiums.

1.82 "Residential Owner Issue(s)" means those matters and issues which require a vote of only the Residential Owners as more particularly described in **Section 4.3.1.**

1.83 "Residential Unit" means a Unit designated on the Condominium Plan as a Residential Unit

1.84 "Restricted Association Property" means the parking area within the Building over which the adjacent property has an easement for parking and pedestrian access and egress and bicycle parking (**"Parking Area"**) pursuant to that certain Parking and Access Easement Agreement recorded in the Official Records of the City and County of San Francisco, on November 15, 2013 as Document No. 2013-J783974-00 (the **"Parking Easement"**). The location of the Parking Easement is shown on **Exhibit "B"** attached hereto and incorporated herein by reference Other than the limited rights of access of the Commercial Occupants for the operation and maintenance of HVAC equipment which are or shall be located within the Parking Area, and the right of emergency egress of all Occupants from the courtyard through the Parking Area, Residential and Commercial Occupants will not have access to this area. Notwithstanding the foregoing, nothing contained herein shall be construed to limit the rights of the Association for access, ingress or egress to the Parking Area for purposes not inconsistent with the Parking Easement. The Parking Easement may be used solely by the owner and tenants of the Boys & Girls Club and their respective employees, agents, invitees, contractors, licensees and other occupants of the adjacent property The adjacent property owner is responsible for maintaining the area in good condition and repair, including the lighting fixtures and the gate securing the Parking Area. The adjacent Property also has an access easement for reasonable vehicular and pedestrian ingress and egress to and from the Parking Area over and across the driveway and sidewalk from the Parking Area to Ash Street ("**Access Easement**").

1.85 "**Storm Drain Infiltration Easement Area**" means that certain area within the Property over which the adjacent property has an easement for shared storm drain infiltration with the Community pursuant to that certain Easement Agreement (Stormwater Drainage) (the "**Stormwater Easement Agreement**") recorded in the Official Records of the City and County of San Francisco, on December 31, 2015 as Document No.2015-K182998. Pursuant to the Stormwater Easement Agreement, the adjacent property has an easement over the courtyard area of the Community to infiltrate the stormwater from the roof of the structure on the adjacent property. The Association shall have the responsibility to maintain the stormwater infiltration system; provided that the Association may recoup a portion of such costs from the Boys & Girls Club pursuant to the Stormwater Easement Agreement.

1.86 "**Supplementary Condominium Plan**" means (i) any Condominium Plan which supplements a previously recorded Condominium Plan, or (ii) a Condominium Plan which is recorded by the Declarant to correct errors in the originally recorded Condominium Plan, which Supplementary Condominium Plan shall not require the consent of the Owners, their Mortgagees or the Association, provided that such Supplementary Condominium Plan shall be in accordance with California Civil Code Sections 4285 and 4290

1.87 "**Supplementary Declaration**" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property and thereafter by the Association to correct errors in this Declaration or to conform this Declaration or any previously recorded Supplementary Declarations to Applicable Laws or any conditions of approval imposed by any Governmental Agency or Governmental Entitlements.

1.88 "**Unit**" means the elements of a Condominium which are not owned in common with the other Owners, such Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The elements of a Condominium that are owned separately, consist of a separate interest in space, the boundaries of which are described as the area designated as "Unit" in the Condominium Plan. There are two types of Units consisting of Residential Units and Commercial Units. The Unit includes all Improvements situated within its boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls), (ii) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (iii) any door or window including any sliding glass doors, (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all Utility Facilities that are located partially within the Unit and partially in the Association Property, such as electrical outlets, and that exclusively serve the Unit, and (vi) all Utility Facilities serving solely that Unit, whether located in the Unit or the Association Property. The following are not part of any Unit: bearing walls, columns, floors, roofs and foundations, Utility Facilities that serve two or more Condominiums wherever located Areas within a dropped ceiling that contain Utility Facilities that serve two or more Condominiums are Association Property and not part of the Unit. In interpreting deeds and plans, the then existing physical boundaries of the Unit, whether in its original state or reconstructed in substantial conformance with the original plans, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan, the deed or any other recorded document, regardless of settling or lateral movements and regardless of minor variances between boundaries shown on the Condominium Plan or any other recorded document and those of the Building.

1.89 "**Utility Facilities**" means all utility facilities serving the Community including, without limitation, intake and exhaust systems, backflow preventers, storm and sanitary sewer systems, drainage systems and pollution control devices, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communications systems, water systems, sump pumps, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Community.

1.90 "**Voting Power**" means the Voting Power of the Association as set forth in **Section 4.2**. Due to the interests of the Commercial Owners and the Residential Owners, there are certain issues which may only be voted upon by Residential Owners and other issues which are voted upon by the entire Association.

ARTICLE 2
OWNERSHIP AND EASEMENTS

2.1 **Ownership of Condominium**. Ownership of each Condominium within the Community includes (a) fee title to a Unit, (b) an undivided interest in the Common Area, as shown on the Condominium Plan and the deed to the Condominium, (c) a membership in the Association, and (d) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Association Property as described in this Declaration, the Condominium Plan, and the deed to the Condominium. Each Residential Owner shall own a 1/74th undivided interest in the Common Area. The undivided interest of each Commercial Owner shall be as set forth in **Section 1.26.**

2.2 **Grid Blocks** Each Commercial Unit consists of contiguous Grid Blocks separated by a Dividing Wall. A Commercial Unit coupled with an undivided interest in the Common Area constitutes a single Condominium. The use of Grid Blocks enables the Commercial Area to be divided into Commercial Condominiums of variable sizes to address the needs of prospective Commercial Owners; however, in no event shall the Commercial Area be divided into more than five (5) Commercial Units

NOTE TO TITLE COMPANY: THIS IS A "GRID" CONDOMINIUM. There could be subsequent conveyances of the Grid Blocks (as defined in the Declaration of Covenants, Conditions and Restrictions of 388 Fulton), described herein, which could result in a change in this legal description and in the undivided interest described herein. All legal descriptions for the real property described herein must be searched to determine the then-current ownership interests.

2.2.1 **Designation of Commercial Units**. Within fifteen (15) days after a conveyance under this **Section 2.2**, the Declarant shall notify the Association of the Grid Blocks so conveyed.

2.2.2 **Commercial Unit Requirements**. Each Commercial Unit must contain contiguous Grid Blocks and must satisfy all local ordinances applicable to separately occupied space.

2.2.3 **Transfer of Grid Blocks** A Commercial Owner shall have the right to transfer Grid Blocks from one Unit to another Unit subject to satisfaction of the following conditions:

(a) **Mortgagee Approval**. The holder of any Mortgages on the affected Units consents to the transfer and appropriate reconveyance and/or other documents are recorded to effect necessary changes to any deeds of trust encumbering the affected Units.

(b) **Recordation**. Appropriate documents are recorded in the Official Records to set forth the revised Grid Blocks contained in the Units.

(c) **Approval by the Association**. The Owner receives prior approval from the Association in accordance with the procedures set forth in **ARTICLE 8**.

(d) **Applicable Laws**. The transfer is in compliance with all Applicable Laws.

(e) **Notice to the Association**. The Owner notifies the Association no later than fifteen (15) days after the conveyance as specified above so that appropriate steps can be taken by Declarant or the Association to reallocate the Commercial Share. To the extent the boundaries of a Unit have been adjusted as a result of a subsequent conveyance of the Grid Blocks, the Commercial Share shall be determined by Declarant, so long as Declarant or any Declarant Party owns any Unit and thereafter by the Association.

2.3 **No Separate Conveyance** The interest of each Owner in the use and benefit of the Association Property shall be appurtenant to the Condominium owned by the Owner. No Condominium shall be conveyed by the Owner separately from the interest in the Common Area or the right to use the portions of the Association Property which are open for access by the Owners and their Invitees in accordance with the Governing Documents. Any conveyance of any Condominium shall automatically transfer the interest in the Common Area and the Owner's right to use the Association Property without the necessity of express reference in the instrument of conveyance.

2.4 **Delegation of Use**. Any Residential Owner entitled to the right and easement of use and enjoyment of the Residential Facilities may delegate such Owner's rights to its

Occupants, subject to reasonable regulation by the Association and subject to the Governing Documents. An Owner who has made such a delegation of rights shall not be entitled to use of the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

2.5 **Limitations**. All of the easements and licenses described in this **ARTICLE 2** are subject to the limitations set forth in **Section 2.15** and any other limitations and restrictions set forth in the Governing Documents

2.5.1 **Below Market Rate Units** Residential Units 210, 212, 214, 301, 310, 314, 404 and 410 are subject to the Residential Inclusionary Affordable Housing Program and the requirements of the Affordable Housing Monitoring Procedures Manual of the San Francisco Planning Department in accordance with the Notice of Special Restrictions Under the Planning Code, recorded in the Official Records on February 17, 2015 as Doc. No. 2015K020485.

2.6 **Commencement of Easements**. All of the easements set forth in this **ARTICLE 2** shall commence upon recordation of this Declaration and the conveyance by the Declarant of a Condominium to a First Purchaser and shall thereafter be deemed to be covenants running with the land for the use and benefit of the Association, the Declarant, the Owners and the Condominiums.

2.7 **Easements in Favor of Residential Owners.**

2.7.1 **Non-Exclusive Easements for Use of Association Property**. Declarant hereby reserves for each Residential Owner for the benefit of such Residential Owner and such Owner's Invitees, non-exclusive easements for ingress, egress, use and enjoyment on, over, through and across the portions of the Association Property as specified in the Governing Documents.

2.7.2 **Exclusive Use Easements**. Declarant hereby reserves and grants to Owners an exclusive easement over the Exclusive Use Easements, designated as being appurtenant to such Owner's Residential Unit in the Condominium Plan and/or the deed to the Residential Unit.

2.7.3 **Bicycle Parking** Declarant shall have the right to assign the Bicycle parking as set forth in **Section 2.12.8.**

(a) **Assignment of Bicycle Parking**. Bicycle parking on the racks in the Bicycle Parking Area may be assigned to a Residential Owner for use in accordance with the terms of the Governing Documents The Commercial Owners shall not have any bicycle parking rights within the Community. The rights assigned to a Residential Owner to use the bicycle racks shall be subject to the rights of the Declarant or the Association to temporarily relocate such bicycle racks and parking upon reasonable notice, in order to accommodate any construction, maintenance or repairs of Improvements within the Community. In such case, Declarant or the Association shall have the right to exchange the affected bicycle parking for other available bicycle parking. Each Residential Owner hereby acknowledges that such activities of the Declarant or the Association may impair the use of such Owner's bicycle parking and may constitute an inconvenience or nuisance, and hereby releases the Declarant and the Association from any claims with respect to such matters.

(b) **Owners' Rights to Bicycle Parking**. Upon assignment of bicycle parking on a rack to a Residential Owner as provided in **Section 2.12.8**, such Residential Owner shall have the exclusive right to the use of the bicycle parking so assigned, subject to the rights of the Declarant and the Association set forth in **Section 2.12.8** and **2.12.6** below. The Association shall not have the right to change the location of such bicycle parking, except as provided in this Section. Upon conveyance of a Residential Condominium by an Owner to another Owner, the bicycle parking rights assigned to such Owner in the records of the Association shall automatically inure to the benefit of the new Owner.

(c) **Relocation Based Upon Agreement of Owners**. If a Residential Owner desires to exchange or lease the rights to use its bicycle parking with another Residential Owner, if both affected Owners voluntarily agree to the exchange or lease, and provided the two Owners sign an agreement in a form prepared by the Association agreeing to the exchange or lease, the Association may then change its records to reflect the exchange or lease requested by the two Owners However, a Residential Owner may only exchange or lease its bicycle parking to another Residential Owner. The Association shall retain in its records the written agreement of the two Residential Owners. Upon the change to the records of the Association, then the new bicycle parking shall inure to the benefit of the future Owners of such Condominiums .

2.8 Easements in Favor of Commercial Owners

2.8.1 Non-Exclusive Easements over Association Property Declarant hereby reserves for the benefit of the Commercial Owners a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over only those portions of the Association Property as may be reasonably necessary for maintenance, repair and replacement of the Commercial Units. Other than as specially stated herein, the Commercial Owners shall have no access to Association Property or the Residential Facilities

2.8.2 Telecommunications. The Commercial Owner(s) shall have for its/their benefit and the benefit of their Occupants, easements reasonably necessary to access the roof of the Building for placement, maintenance, repair and replacement of satellite and microwave dishes, antenna and laser heads, and other telecommunication devices, together with associated equipment and cable by licensed contractors reasonably approved by the Association, at a location reasonably designated by the Declarant or the Association.

2.8.3 HVAC Equipment. The Commercial Owners shall have a non-exclusive easement over the Parking Area for the installation, maintenance and repair of HVAC equipment to service the Commercial Units by licensed contractors reasonably approved by the Association, at a location reasonably designated by the Declarant or the Association.

2.8.4 Signage. The Commercial Owners shall have a non-exclusive easement over the Building exterior for signage in compliance with the Design Guidelines and any additional criteria which may be specified in the Association Rules and Applicable Laws.

2.8.5 Restaurant Equipment Declarant hereby reserves and grants for the benefit of the Commercial Owners a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over only those portions of certain Commercial Units, certain Residential Units and a portion of the Association Property as may be reasonably necessary for maintenance, repair and replacement of the air shafts, vents and commercial grease ducts located within portions of the Commercial and/or Residential Units.

2.9 Easements in Favor of Residential Owners and Commercial Owners.

2.9.1 Limitations on Easements over the Association Property. Except as otherwise expressly permitted hereunder and except for Declarant, no Owner shall have the right of access to any rooftop, mechanical or operating areas or any other areas within the Building to which access has been restricted by the Governing Documents or the Association.

2.9.2 Easements for Drainage and Runoff. Declarant hereby reserves for the benefit of each Owner and such Owner's Invitees, an easement for drainage through the established drainage pipes and facilities.

2.10 Easements in Favor of the Association and the Owners.

2.10.1 Encroachment Declarant hereby reserves and grants to the Owners for their benefit and the benefit of their Occupants and their respective Condominiums and to the Association for its benefit and the benefit of the Association Property non-exclusive easements, over, under, across and through the Units, and the Association Property for encroachment, support, maintenance, repair, occupancy and use of such portions of the Units and/or Association Property as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other Improvements or any portion thereof, or any other cause In the event any portion of the Community is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching Improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.10.2 Structural Support. Declarant hereby reserves and grants to the Owners for the benefit of their respective Condominiums and to the Association for the benefit of the Association Property, non-exclusive easements and rights in and to all supporting components within and upon the Building and other portions of the Community, for structural support of the Improvements situated therein Such non-exclusive easements shall not be deemed to create any rights for Owners to attach Improvements to the exterior of the Building.

2.10.3 Utilities. Declarant hereby reserves and grants to the Owners, for their benefit and the benefit of their Occupants and their respective Condominiums, and to the Association, for its benefit and the benefit of the Association Property, reciprocal non-exclusive easements over, under, across and through the Community for the maintenance, repair and replacement of the Utility Facilities which such Owner or the Association is obligated to maintain pursuant to this Declaration.

2.11 Easements in Favor of the Association.

2.11.1 Association Right of Entry Declarant hereby reserves and grants to the Association and the Association's agents, contractors and employees an easement to enter the Units as set forth in **Section 3.3.4**. In the case of any such entry over, upon, across and through any Property that is not owned by the Association, the Association shall endeavor to provide reasonable prior notice to the Owner of the affected portions of the Property.

2.12 Easements and Rights in Favor of Declarant.

2.12.1 **Declarant's Easements to Perform Declarant's Rights**. Declarant hereby reserves to itself, with the right and power to grant the same, a non-exclusive easement to perform its duties and exercise its rights, powers and obligations under this Declaration, including, without limitation, the rights described in this **Section 2.12.1** and the rights and, powers and obligations described in **ARTICLE 9.**

2.12.2 **Maintenance and Repair**. Declarant hereby reserves to itself for its benefit, together with the right and power to grant and transfer the same, a non-exclusive easement over, upon, through and across the Property for access to perform necessary maintenance of any Improvements constructed by Declarant or its respective agents, employees and contractors. Such right includes the right of Declarant to enter upon the Property to perform any work required to be performed pursuant to any of the Governmental Entitlements, or to cure any failure of the Association to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee and to perform its obligations under any warranties provided by Declarant to an Owner and/or to exercise any repair rights granted to Declarant under this Declaration, any warranties or Applicable Laws; provided, however, that nothing contained herein shall be deemed to impose any obligation on Declarant to cure any failure of the Association to perform its Maintenance Obligations.

2.12.3 **Installation of Additional Improvements**. Declarant hereby reserves to itself, with the right and power to grant the same, the right to install and operate within the Association Property such landscaping, drainage areas, lighting, signage, monumentation, Utility Facilities, and other facilities and Improvements, as may be deemed appropriate by Declarant and/or required by the Governmental Entitlements or in connection with the issuance of any permits or approvals for the benefit of Declarant. In addition, Declarant hereby reserves to itself a non-exclusive easement over, upon and across all Association Property for purposes of such access as may be reasonably required in connection with such activities.

2.12.4 **Utility Facilities**. Declarant hereby reserves to itself, together with the right to grant and transfer the same, easements on, over, under, through and across the Property for the purpose of constructing, erecting, operating and maintaining facilities and improvements, including, without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, as may be shown on any recorded subdivision or Final Map or as are required by any Governmental Agencies or as may be required in connection with the development of the Property.

2.12.5 **Temporary Construction, Marketing and Repair Easements**. Declarant hereby reserves to itself, together with the right to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over and across, any portions of the Property as is reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and/or repair and replacement of the Improvements and the right to exercise any warranty or rights to repair granted to Declarant under this Declaration, any other warranty or Applicable Laws Such rights of Declarant described above, include, among others, the right of Declarant to market Units from a temporary sales trailer (the "**Sales Trailer**") to be located on or adjacent to the Property and which will require access from, across and through the Property.

2.12.6 Easements for Signage. Declarant hereby reserves to itself, together with the right to grant and transfer the same, easements on, over, under, through and across the Association Property to install, maintain, repair and replace, identification, promotional, and other signage, banners, flags, and other promotional advertising materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of the activities described in **Section 2.12.5** and **ARTICLE 9**.

2.12.7 Bonds or Other Security. Declarant hereby reserves to itself, together with the right and power to grant and transfer the same for its benefit and with the prior consent of Declarant, the right to enter upon any portion of the Association Property to perform any work required to be performed under any of the Governmental Entitlements or to cure any failure of the Association to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee.

2.12.8 Bicycle Parking Rights. Until Declarant no longer owns any portion of the Property, Declarant shall have the sole right to assign to Owners an exclusive right to use a bicycle parking space. Declarant shall, upon assigning a bicycle parking space to an Owner designate such assignment in the records of the Association If any bicycle racks remain unassigned after Declarant no longer owns any portion of the Property, the Association shall have the right to assign any such bicycle parking space to a Residential Owner.

2.13 Easements in Favor of Declarant and/or the Association.

2.13.1 Enforcement Easement. Declarant hereby reserves to itself and grants to the Association for its benefit and the benefit of its and the Associations respective agents, employees and contractors, a non-exclusive easement and right of access over, upon, across and through all portions of the Property, for the purpose of taking such action as may be reasonably required to exercise the remedies of the Declarant or the Association (as applicable) in regard to any violation of the Governing Documents for performing its duties, obligations and exercising its powers described in the Governing Documents including, without limitation, Maintenance Obligations. In the case of any such entry over, upon, across and through any portion of the Property that is not owned by the Association, (a) Declarant or the Association shall endeavor to provide reasonable prior notice to the Owner, except in the case of Emergency where no such notice shall be required, and (b) Declarant or the Association shall use commercially reasonable efforts to minimize any inconvenience to the Owners and/or Occupants.

2.13.2 Communications Facility. Declarant hereby reserves for its benefit and the benefit of any Declarant Parties and grants to the Association on a non-exclusive basis, the right to install, maintain, repair and replace a satellite or other communications device on the roof of the Building, provided that such installation shall be in conformance with all Applicable Laws and the Architectural Guidelines

2.14 Easements in Favor of the Adjacent Property. In accordance with the Parking and Access Easement Agreement defined in **Section 1.84** and the Storm Drain Infiltration Easement defined in **Section 1.85**, the owner of the adjacent property shall have an easement over a portion of the Community (the "**Restricted Association Property**") for the purposes described in the recorded easements referred to in this Section. Consistent with the Parking and Access Easement, the Association and its Members shall have restricted access over the Restricted Association Property

2.15 Other Easements. Nothing in this Declaration shall be deemed to limit the right of Declarant or (with the prior consent of the Declarant) the Association, to grant or reserve any additional easements over any portion of the Property to such grantees and for such purposes as Declarant or the Association (as applicable) may deem appropriate, provided that any such easement shall not be inconsistent with the easement rights granted in this Declaration and any Supplementary Declaration

2.16 Limitations on Easements and License Rights. The easement rights, and the reservations of the right and authority to grant easements, described in this Declaration, shall be subject to the limitations set forth below.

2.16.1 Easements of Record The Property and all of the easements granted or reserved herein are subject to all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way as shown on any Final Map and any other matters of record, including, without limitation, the Governmental Entitlements and any agreements recorded by Declarant to memorialize the easements and other rights reserved to Declarant.

2.16.2 Governing Documents. All of the easements and other rights granted herein are subject to the limitations, restrictions and easements set forth in the Governing Documents.

2.16.3 Restricted Access. All of the easements and other rights granted herein, are subject to the right of Declarant or the Association to restrict access to certain areas, as may be necessary to comply with Governmental Entitlements, to perform Maintenance Obligations in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Association under the Governing Documents. The Declarant or the Association shall also have the rights to restrict access to certain areas of the Community including without limitation utility rooms and other areas deemed unsafe for entry

2.16.4 Suspend Right to Use Residential Facilities. All of the easements are subject to the right of the Association, after Notice and Hearing, to temporarily suspend a Residential Owner's rights as a Member to use the facilities within the Association Property for a period not to exceed sixty (60) days (unless such rights are suspended for failure to pay Assessments) pursuant to the terms of the Governing Documents. Notwithstanding the foregoing, no such suspension shall deny an Owner access to his or her Residential Unit.

2.16.5 Easements and Dedication. The Association shall have the right to dedicate, or grant easements over all or any part of the Association Property or any interest therein to the City or other Person, which dedication, transfer or easements shall be subject to the provisions of this Declaration and such other conditions as the Association deems proper.

2.16.6 Control Bicycle Parking Subject to the provisions of this Declaration and the rights of Declarant hereunder, the Association shall have the right to control use of the Bicycle Parking Area and to promulgate Association Rules to control use of the Bicycle Parking Area.

2.16.7 Duration of Easement Rights Except for the rights of Declarant, which expire as provided in **ARTICLE 9**, the easement rights granted under this Declaration shall be for a term and duration coextensive with the Owner's title or interest in and to a Unit. Upon conveyance of a Condominium, such rights shall pass to the successor Owner(s) of the Condominium being conveyed.

2.16.8 **Rights of Invitees**. Nothing contained in this ARTICLE is intended to grant any third party beneficiary rights or any other rights to an Invitee. No Invitee shall have any rights under this ARTICLE independent of the rights granted to an Owner.

2.16.9 **No Separate Transfer** None of the easements described above shall be conveyed, transferred, assigned, or encumbered separately from the fee interests in the individual Condominiums Easements that benefit or burden any Condominium shall be appurtenant to that Condominium and shall automatically accompany the transfer or conveyance of such Condominium, even though the description in the instrument of transfer may refer only to the interests in the Condominium as transferred or conveyed.

2.17 **Light, Air and View**. No Owner shall have an easement for light, air or view over the Condominium of another Owner and no diminution of light, air or view by any Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light.

2.18 **Creation of Designated Exclusive Use Easement Walls or Floors**. The Declarant and, subject to the provisions of **ARTICLE 8** the Association, shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Residential Units, without amending this Declaration or the Condominium Plan, an exclusive use easement on and through any demising wall(s) or floors separating two (2) or more Residential Units and the right to alter, modify or remove such demising walls or floors subject to the consent of the Declarant and conformance with the requirements of the Board, pursuant to the provisions of **ARTICLE 8.** If an Owner receives the required approvals hereunder and combines two (2) or more adjacent Residential Units, such Residential Units shall be treated as separate Residential Units for all purposes hereunder, including separate Assessments for each individual Residential Unit. So long as Declarant owns any portion of the Property, or two (2) years after the conveyance of a Residential Unit pursuant to a Public Report, whichever is earlier, this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect.

ARTICLE 3
THE ASSOCIATION

3.1 **The Organization**. The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Condominium to an Owner under a Public Report, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

3.2 **Association Action; Board of Directors and Officers; Members' Approval**. Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Governing Documents. Except as otherwise provided in Governing Documents, all matters requiring the approval of Members shall be deemed approved if (i) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (ii) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws, or (iii) in certain situations set forth in **Section 3.4,** such matters as are approved in accordance with the procedures set forth in **Section 3.4.6.**

3.3 Powers of the Association Subject to the limitations expressly set forth in the Governing Documents, the Association shall have all the powers of a non-profit mutual benefit corporation organized under the laws of the State of California. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described in **Section 3.5**.

3.3.1 Performance of Duties; Commencement of Association's Duties and Powers. The Association shall have the power to undertake all of the express duties required to be performed by the Association. The duties, rights and powers of the Association as described in this Declaration shall commence from and after the date of the conveyance of fee ownership of any portion of the Property from the Declarant to a First Purchaser, or such earlier date that the Declarant may elect and the Association shall thereupon assume all such duties and such rights and powers.

3.3.2 Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

3.3.3 Right of Enforcement. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, shall have the power to (a) take disciplinary action and/or assess monetary fines against an Owner for violation of the Governing Documents by such Owner or their Invitees, (b) commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents, (c) after Notice and Hearing, suspend the rights to use any portion of the Association Property or membership rights or privileges and/or (d) enforce by mandatory injunction, or otherwise, all of these provisions or any resolutions of the Board. In addition, the Association can temporarily suspend the membership rights and privileges and/or can assess monetary fines against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions, in accordance with the procedures set forth in this Declaration and in the Bylaws; provided, however, that unless such suspension is due to a failure to pay Assessments pursuant to **ARTICLE 5**, such suspension shall not last longer than sixty (60) days. In no event shall the Association suspend an Owner's right and easement of access for ingress and egress over the Association Property to the extent necessary to provide access and utility service to the Residential Unit.

3.3.4 Right of Entry and Enforcement Except in the case of an Emergency in which case no prior notice need be given, the Association or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter in or on to the interior of any Unit for the purpose of (a) construction, maintenance or repair, (b) enforcing the Governing Documents or to perform its obligations under the Governing Documents to cure any default by an Owner, or (c) inspecting, maintaining and repairing the Improvements, if any, located within said Unit which are required to be maintained by the Association as provided in this Declaration. Such Persons shall not be deemed guilty of trespass by reason of such entry. For entry to a Commercial Unit, the Association shall use its best efforts to minimize disruption to the business operating within such Commercial Unit, including without limitation, entering the Unit during hours when the business is not open to the public when possible.

3.3.5 **Delegation of Powers**. The Association shall have the power to delegate its rights, authority, powers and responsibilities, in whole or in part, under the Governing Documents to professional managers, committees, employees, officers, or consultants, as may be deemed necessary by the Board.

3.3.6 **Easements and Rights of Way**. The Association shall have the power to exercise any of the easements and other rights granted to the Association under **ARTICLE 2**. Declarant or the Association may grant and convey to any third party non-exclusive easements and licenses for use and rights of way in, on, over or under any Association Property in accordance with the provisions of this Declaration so long as such easements do not materially and adversely interfere with the Owners' rights set forth in this Declaration. The affirmative vote of Members owning at least a majority of the Condominiums shall be required before the Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 4600 A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the procedures set forth in the California Civil Code and the rules adopted by the Board pursuant thereto.

3.3.7 **Dedication**. The Association may dedicate any of the Association Property to an appropriate public authority for public use

3.3.8 **Capital Improvements**. Subject to the provisions of **Section 5.6**, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property. Any Capital Improvement which benefits only the Residential Owners shall be approved by the consent of two-thirds (2/3rds) of the Residential Owners, and in such case, the cost for such Capital Improvements shall be assessed against only the Residential Owners If such Capital Improvement is for the exclusive benefit of the Commercial Owners and is to be assessed solely against the Commercial Owners, then only the consent of the Commercial Owners owning a majority of the Commercial Share shall be required.

3.3.9 **Acquire Property**. The Association shall have the power to acquire and hold real and personal property as may be necessary or convenient for the management or operation of the Association Property, the administration of the affairs of the Association or for the benefit of the Owners, and may dispose of the same by sale or otherwise.

3.3.10 **Enter Into Agreements** The Association shall have the power to enter into maintenance, subsidy or other agreements with Declarant, with owners of property adjacent or in the vicinity of the Property (including, without limitation, Governmental Agencies) or any owners associations. Unless otherwise specified in the agreement or a Supplementary Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Property shall be binding on the Association.

3.3.11 **Contract for Goods and Services**. The Association has the power to contract for goods and services for the benefit of the Community that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 3.5.1**. Any agreement for professional management of the Community or any agreement providing for services of the Declarant shall be for a term not to exceed one (1) year without the consent of a majority of each class of Members, provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

3.3.12 **Election of Officers**. The Board shall have the power to elect officers of the Association, and to fill any vacancy on the Board except for vacancies created by the removal of a Board member as set forth in the Bylaws

3.3.13 **Borrow Funds** The Association shall have the right to borrow money to improve, repair or maintain the Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of at least sixty-seven percent (67%) of each class of Members. Notwithstanding the foregoing, in no event may the Association borrow money to fund any litigation by the Association relating to the Community or the Improvements unless the consent of ninety percent (90%) of each class of Members and the consent of ninety percent (90%) of the First Mortgagees is obtained.

3.3.14 **Rights Regarding Title Policies**. If any title claims regarding the Association Property are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

3.3.15 **Claims and Actions**. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or any portion thereof, on behalf of all Owners; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim for construction defects within the Community including, without limitation, all claims under California Civil Code Section 895 *et seq.*, such that from and after the first election of directors in which the Class A Members of the Association participate, Declarant shall have no control over the Association's ability to decide whether to initiate a claim for construction defects and in the event of such a vote, the affirmative vote of a majority of the non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Property pursuant to Civil Code Section 895 *et seq.* or in accordance with the procedures described in **Section 15.5.1**. The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Each Owner hereby agrees to delegate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of such claims.

3.3.16 **Limit Guests** The Association shall have the right to (a) limit, on a reasonable basis, the number of guests and tenants of the Owners using the Common Roof Deck, (b) charge reasonable fees for special or extraordinary use of such facilities and/or (c) allow portions of the facilities to be reserved for special events.

3.3.17 **Assignment of Maintenance Responsibilities**. The Association shall have the power to relinquish or assign its maintenance responsibilities to any Governmental Agencies, including without limitation, maintenance or assessment districts, utility companies and/or school districts; provided that such Governmental Agency shall have accepted such maintenance responsibility of the Association.

3.4 **Duties of the Association**. In addition to the powers described above, and without limiting their generality, the Association, has the power and the obligation to perform each of the duties set forth below.

3.4.1 **Applicable Laws and Governmental Entitlements**. The Association shall comply with all Applicable Laws and the Governmental Entitlements.

3.4.2 **Obligations Under Other Governing Documents**. The Association shall perform all other duties that may be expressly imposed on the Association in the Governing Documents.

3.4.3 **Acceptance of Association Property**. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall accept any Association Property and Improvements situated thereon and any easements conveyed by Declarant and/or created under this Declaration and shall maintain, repair, replace, operate, and otherwise manage all of the Improvements and facilities required to be maintained by the Association, and all personal property acquired by the Association in accordance with the terms and provisions of the Governing Documents and the Governmental Entitlements. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents The Association shall comply with the requirements of any agreements entered into between Declarant and a Governmental Agency pertaining to the Association Property. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of such Improvements, or the acceptance of maintenance responsibilities therefore, the Association shall be obligated to accept title to the Association Property and undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provisions for enforcement set forth in **ARTICLE 15** herein.

3.4.4 **Utilities**. The Association shall acquire, provide and pay for water and other utility services for the Association Property to the extent necessary. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Association Property reasonably necessary to the ongoing development and operation of the Community.

3.4.5 **Maintenance of Community**. The Association shall perform its Maintenance Obligations in accordance with **ARTICLE 7**.

3.4.6 **Members' Approval of Certain Actions**. In the event any claim or other actions brought by the Association against Declarant, including without limitation claims brought under California Civil Code Section 895, et seq. involving allegations of construction defects relating to the Association Property or Condominiums, is not resolved pursuant to the non-adversarial procedures set forth in **ARTICLE 15** and the Fit and Finish Warranty, as applicable, the Association shall not initiate a further action or arbitration proceeding under **ARTICLE 15** or the Fit and Finish Warranty without first obtaining the consent of the Owners other than Declarant constituting a majority of the Voting Power. Each Owner and the Association, by acceptance of a deed to a Condominium or Association Property, as applicable, agrees that because representative claims (i.e. claims related to the Association Property or claims by the Association on behalf of the Owners) by the Association may create disclosure requirements and/or may impair the ability of Owners to sell or finance their Condominiums, the Association must obtain the consent of a majority of Owners before filing such representative claims. Each Owner and the Association acknowledge that obtaining such consent is a reasonable requirement to ensure that each Owner is given the ability to evaluate the impact such action or arbitration proceeding may have on the value, sale and/or financeability of Condominiums.

3.4.7 Management. The Association shall have the duty to retain a professional manager or other Persons and contract with independent contractors or managing agents who have professional experience in the management of similar communities to perform any services required for the maintenance, protection, operation and preservation of the Property.

3.4.8 Assessments. The Association shall establish, determine, levy, collect and enforce payment of all Assessments and cause to be prepared all budgets and financial statements and establish and maintain a working capital and contingency fund as required by the Governing Documents.

3.4.9 Taxes and Assessments. The Association shall have the duty to pay all real and personal property taxes levied against the Association Property or any other taxes or assessments which could become a lien on the Association Property or any portion thereof. Such taxes and assessments may be contested by the Association provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. If all or some of the Units are taxed under a blanket tax bill, each Owner shall pay his or her proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated among the Owners and their Condominiums, based upon the prorated approximate square footage of each Unit. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay the proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall add to the Regular Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Community this Section may not be amended without the express written consent of Declarant for two (2) years after the conveyance of the first Residential Unit pursuant to a Public Report.

3.4.10 Liens and Charges. The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property, or any other property or interest of the Association.

3.4.11 **Architectural Control**. The Association shall have the duty to promulgate architectural standards and procedures as set forth in the Architectural Guidelines and may appoint or remove members of the Architectural Committee or hire a consultant in connection therewith in accordance with the provisions of **ARTICLE 8**

3.4.12 **Association Rules**. The Association shall adopt and be entitled to modify and enforce the Association Rules as it deems reasonable. The Association Rules shall govern the Community. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. The Association is specifically authorized to adopt rules regarding smoking within the Community, including without limitation, rules prohibiting smoking within the individual Units and throughout the Association Property. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents. Notwithstanding any provision of this Declaration to the contrary and to the extent Civil Code Section 4340 *et seq.* is applicable to the Association Rules, any rule which is considered to be an Operating Rule may not be adopted, changed or amended except by and pursuant to the procedures set forth in California Civil Code Section 4340 *et seq.*

3.4.13 **Insurance** The Association shall maintain the insurance described in **ARTICLE 10.**

3.4.14 **Notice Prior to Litigation**. The Association shall notify all Owners of any litigation filed for or on behalf of the Association The notice shall include a proposed budget for the litigation and an explanation of the source of the funds for the litigation. Such notice shall provide an explanation of why the litigation is being initiated or defended, and shall include a budget for the litigation (including, without limitation, experts' fees and costs, consultants' fees and costs and the costs of the proceedings.) The notice must state that the members have a right to review an accounting for the litigation provided in Section 5520 of the California Civil Code, which will be available at the Association's office. The accounting shall be updated monthly. Any such litigation which is filed shall also conform to the requirements set forth in **ARTICLE 15**.

3.4.15 **Financial Matters**. The Association shall prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

3.4.16 **Use of Proceeds to Repair**. If the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of replacing reserve funds previously utilized by the Association to cause such repairs and then, to the costs of such litigation. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by Applicable Laws

3.4.17 **Inspections**. The Association shall perform all inspections as and when required under the Association Maintenance Manual.

3.4.18 **Warranties**. The Association shall comply with the terms of each warranty in favor of the Association, if any, for any equipment or facilities within the Association

Property, which warranties may be impaired or eliminated if the Association fails to maintain in effect certain maintenance contracts.

3.4.19 **Maintenance Manuals**. The Association shall maintain at the offices of the Association a copy of the Owner Maintenance Manual and shall make available to every Owner upon request a copy of the Owner Maintenance Manual. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Owner Maintenance Manual and the Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. Notwithstanding the foregoing, no changes to the Owner Maintenance Manual or the Association Maintenance Manual may be made within ten (10) years after the first conveyance of a Unit pursuant to a Public Report without Declarant's approval.

3.4.20 **Dedications to the City**. Certain portions of the Property may have been dedicated to the City on the Final Map. If the City does not accept such dedications, the Association shall be required to accept the conveyance of such Property in fee title The Association's acceptance of such transfer shall be through the president of the Association who shall be authorized to execute any document(s) required to facilitate transfer of such areas or any portion thereof.

3.4.21 **Participation in Association**. Commencing on the date on which the Class B membership shall cease to exist, the Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each an "**Open Meeting**") as if Declarant was an Owner, and Declarant shall be entitled to have a representative ("**Declarant's Representative**") present at all Open Meetings. However, the Board has the power to withhold information from Declarant's Representative and to exclude Declarant's Representative from any Open Meeting or portion thereof if, in the good faith judgment of the Board, access to such information or attendance at the Open Meeting would adversely affect the attorney-client privilege between the Association and its counsel or would not be in the best interest of the Association or the Owners. The Declarant's Representative shall not be invited to attend executive sessions of the Board. The Declarant's Representative will attend any Open Meeting it is permitted to attend in an observer capacity only, and it shall not have any right to vote on matters coming before the Board or Owners. The Association shall, within thirty (30) days after each Open Meeting, provide copies to Declarant's Representative of all minutes of all Open Meetings. Declarant's rights to receive written notice of meetings, to have a Declarant's Representative present at such Open Meeting and to be sent minutes, as described above, shall continue until the expiration of all statutory periods applicable to any claims that may be made against Declarant in connection with the development of the Community (the "**Statutory Claims Period**").

3.5 **Limitations on Authority of Board**.

3.5.1 **Actions Requiring Member Approval** The Association shall not take any of the actions listed below except (a) with the vote or written consent of a majority of the Members of each of Class A and Class B Members during the time the Class B voting structure set forth in **Section 4.2** is in effect; or (b) except with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, or by written approval provided through electronic transmission in connection with an Emergency pursuant to Civil Code Section 4910 of at least a majority of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership, except that if any of the actions set forth below are actions which only relate to the Residential Condominiums, then only the consent of a majority of the Residential Owners shall be required, and that if the action only relates to the Commercial Condominiums then only the approval of the Owners of a majority of the Commercial Share shall be required.

(a) Incur aggregate expenditures for capital improvements to the Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(b) Sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(c) Pay compensation to Members for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association; or

(d) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association Property for a term longer than one (1) year with the following exceptions:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration;

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(iii) An agreement for cable television services and equipment or satellite television services or equipment not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(iv) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits short-rate cancellation by the insured;

(v) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party;

(vi) A contract submitted to the BRE in connection with an application for a Public Report; and

(vii) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association.

3.5.2 __Property Manager__. The Association shall not hire any employees. The manager of the Association shall at all times be a professional manager operating as an independent contractor The Association shall not discontinue the management of the Association by a professional, and certified or accredited management company without the vote of (a) Declarant, so long as Declarant owns any Unit within the Community, or two (2) years after the first conveyance of a Residential Unit pursuant to a Public Report, whichever is later, and (b) a vote of seventy-five percent (75%) of the Voting Power of the Association and their First Mortgagees. If the Association votes to discontinue the management of the Association by a certified or accredited professional manager in accordance with the procedures set forth above, then any replacement manager shall have at least five (5) years experience in the management of mixed use condominium communities and shall have earned accreditation or certification from a professional association management organization such as the California Association of Community Managers (designation of CCAM or higher) or the Community Association Institute (designation of CMCA or better).

3.6 __**Personal Liability**__ No volunteer, officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant (each a "**Management Party**"), shall be personally liable to any Owner, or to any other Person, including the Association, for any error or omission of any Management Party if such Person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition, as more particularly specified in California Civil Code Section 5800, any person who suffers bodily injury, including, without limitation, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Community either as a tenant or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 5800, shall not recover damages from such Board member if such Board member committed the act or omission within the scope of its Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 5800 have been satisfied (an "**Official Act**").

3.7 __**Indemnification of Management Parties**__. The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission that such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

3.8 Additional Provisions. Notwithstanding any provisions of this Declaration to the contrary, by accepting a deed for a portion of the Property, the Association and the Owners acknowledge and agree that there may be Applicable Laws for the operation of the Association and the Property by the Association, including, without limitation, the Davis-Stirling Common Interest Development Act of Section 4000, et seq. of the California Civil Code and the Association and Owners shall comply with such provisions to the extent required by such Applicable Laws.

ARTICLE 4
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

4.1 Membership.

4.1.1 Qualifications. Each Owner of a Condominium that is subject to Assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until its ownership interest in the Condominiums ceases at which time its membership in the Association shall automatically cease.

4.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents as the same may from time to time be amended.

4.1.3 Transfer of Membership. The Association membership of each Owner shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

4.2 Number of Votes. The Association shall have two (2) classes of voting membership The voting rights described in **Sections 4.2.1** and **4.2.2** below shall constitute the Voting Power:

4.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in **Section 4.2.2**), and shall be entitled to one (1) vote for each Residential Condominium owned. The Commercial Owners, with the exception of Declarant, shall be entitled to a total of five (5) Votes, divided among the Commercial Owners according to their Commercial Share. When more than one (1) Person holds an interest in any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Condominium.

4.2.2 Class B Members Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Residential Condominium owned or, for the Commercial Condominiums, three (3) times Declarant's Commercial Share for any Commercial Condominium or Grid Block owned by Declarant or a Declarant Party. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) The date the total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member, or

(b) The second anniversary of the first close of escrow of a Condominium covered by the original Public Report.

4.3 Member Approval. As long as Class B membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in **Section 3.4.6**. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

4.3.1 Special Voting Rights for Owners of Residential Condominiums. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following shall require the approval of a majority of the Voting Power of the Residential Owners, unless a higher percentage is required under this Declaration in which case the higher percentage shall apply:

(a) Any matter requiring a vote of Owners relating to the allocation to, or increase or decrease of the assessments under the Residential Budget or assessments attributable only to the Residential Owners except that, if Section 5600 et seq. of the California Civil Code or any similar Applicable Law requires the approval of all Owners, then this provision shall not apply;

(b) Any matter requiring a vote of Owners relating to the Residential Facilities and related Improvements;

(c) Any changes to the Community Handbook affecting solely the Residential Condominiums; and

(d) Any other matter solely relating to the Residential Condominiums.

4.3.2 Special Rights for the Owners of Commercial Condominiums. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following shall require the approval of the Owners of a majority of the Commercial Share:

(a) Any matter relating solely to the Commercial Condominiums;

(b) Any changes to the Community Handbook affecting solely the Commercial Condominiums; and

(c) Any issue which would adversely impact the profitability of a Commercial Unit in connection with a use otherwise permitted by this Declaration.

4.4 **Joint Owner Votes**. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) Person exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

4.5 **Commencement of Voting Rights**. An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for and in the Governing Documents.

ARTICLE 5
ASSESSMENTS

5.1 **Creation of Lien and Personal Obligation for Assessments**. Declarant, for each Condominium owned, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments. All Assessments levied hereunder, together with Additional Charges, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to be effective upon recordation of a notice of delinquent Assessments Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Person who owned the Condominium at the time when the Assessment fell due and shall bind its heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent Assessments, the personal obligation for delinquent Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent Assessments If more than one Person was the Owner of a Condominium, the personal obligation to pay such Assessment or installment respecting such Condominium shall be both joint and several.

5.2 **Funds Held in Trust** The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Community. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. A general operating fund shall be established for current expenses of the Association.

5.3 **Purpose of Assessments** The Assessments shall be used exclusively to perform the obligations and duties of the Association, including, without limitation, the improvement of the Association Property and performance of the Maintenance Obligations of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any Assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision at the next available meeting. In addition to the notice required by **Section 3.4.15**, such notice shall also provide an explanation of why operating funds cannot be used and how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in California Civil Section 5520 which will be available at the Association's office. The accounting shall be updated monthly.

5.4 Regular Assessments.

5.4.1 Payment of Regular Assessments. Regular Assessments for each Fiscal Year shall be established when the Board approves the Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation to pay such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

5.4.2 Budgeting. Each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by Applicable Law.

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

5.4.4 Non-Waiver of Assessments. If before the expiration of any Fiscal Year the Association fails to fix Regular Assessments for the next Fiscal Year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

5.4.5 Supplemental Assessments. If the Board determines that the Association's essential functions may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall determine the approximate amount of the inadequacy. Subject to the limits described in **Section 5.9.1**, the Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Condominium (**"Supplemental Assessment"**).

5.5 Special Assessments. If the Association determines at any time that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Association Property, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association for the then current

Fiscal Year, it shall become a Special Assessment. Any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for the then current Fiscal Year shall be subject to the limitations set forth in **Section 5.9.1**; provided, however, that such limitation shall not apply to Special Assessments levied by the Association to replenish the Association's reserve account as provided in the Section of the Bylaws titled "Reserves." The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by Applicable Laws of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

5.6 **Capital Improvement Assessment** In addition to any other Assessments, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with **Section 3.3.8**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. However, if the capital improvement benefits only the Residential Owners without contributions from the Commercial Owners, such Capital Improvement Assessments shall be payable by the Residential Owners. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 5.9.1**

5.7 **Compliance Assessments**. The Association may levy a Compliance Assessment against any Owner for bringing an Owner or its Condominium into compliance with the provisions of the Governing Documents as a disciplinary measure for failure to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property for which the Member was allegedly responsible, and/or any other charge designated a Compliance Assessment in the Governing Documents, together with any Additional Charges related thereto. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be a Compliance Assessment The Association shall have the authority to adopt a reasonable schedule of Compliance Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and California Civil Code Section 5855, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Compliance Assessment as herein provided for nonpayment of an Assessment. A hearing committee may be established by the Association to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 5.14.1**, Compliance Assessments are Assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement does not apply to Additional Charges.

5.8 **Allocation of Assessments**. All Regular Assessments, Special Assessments and Capital Improvement Assessments for the Commercial Units shall be determined and assessed based upon the allocations set forth in **Exhibits "D"** and **"E"**. Declarant or the Association shall have the right to make reasonable adjustments to the allocation formulas to the extent reasonably necessary to reflect actual operational costs and the relative benefits provided to any Owner. Compliance Assessments shall be levied directly to the individual Commercial Owners.

5.9 **Changes to Assessments**.

5.9.1 **Limitation on Assessments**. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of (i) California Civil Code Section 5105, *et seq.* and the rules adopted by the Board pursuant thereto and (ii) California Corporations Code Sections 7510 *et seq.* and 7613. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 5605. For the purpose of this Section, a quorum shall mean a majority of the Owners of the Association and an Emergency shall mean any one of the following:

(a) an extraordinary expense required by an order of a court;

(b) an extraordinary expense necessary to repair or maintain the Association Property, where a threat to personal safety is discovered; or

(c) an extraordinary expense necessary to repair or maintain the Association Property, that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required by California Civil Code Section 5300; provided, however, that prior to the imposition or collection of a Special Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is 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 Special Assessment

5.9.2 **Calculation of Percentage Increase in Regular Assessments**. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in **ARTICLE 9** of the Bylaws with respect to the Fiscal Year for which an Assessment is being levied.

5.9.3 **Residential Budget and General Budget**. The Budget consists of a General Budget and a Residential Budget. The General Budget sets forth the portion of the Common Expenses allocable to both the Residential Owners and the Commercial Owners The Residential Budget sets forth the portion of the Common Expenses allocable only to the Residential Owners The General Budget and Residential Budget shall consist of (a) Common Expenses which are fixed at a uniform rate for all Units to which such Common Expenses apply (**"Fixed Expenses"**) and (b) Common Expenses which consist of certain line items which are variable ("**Variable Expenses**"). The Variable Expenses in the General Budget shall be allocated in accordance with the formula set forth in **Exhibit "D"** attached hereto and incorporated herein (Allocation of Variable Expenses) and **Exhibit "E" ("Commercial Share")**.

5.10 __Rate of Assessment__. Except as otherwise provided for herein, that portion of Regular, Special and Capital Improvements Assessments set forth in the General Budget and the Residential Budget as "**Variable Expenses**" shall be allocated by the Board as provided in **Exhibit "D"** attached hereto. All other items covered by any Regular, Special and Capital Improvement Assessments set forth in the General Budget and the Residential Budget shall be fixed at a uniform rate for all Units. Compliance Assessments shall be levied directly to the individual Units.

5.11 __Date of Commencement of Regular Assessments; Due Dates__ The Regular Assessments provided for herein shall commence as to all Condominiums on the first day of the month following the conveyance of the first Residential Condominium under authority of a Public Report.

5.12 __Notice and Assessment Installment Due Dates__. The Association shall provide notice by first-class mail to each Owner of any increase in the Regular Assessment, and notice of any Special Assessment or Capital Improvement Assessment not less than thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment or the Special Assessment or Capital Improvement Assessment becoming due. The due dates for the payment of Regular Assessments normally shall be payable the first day of each month unless some other due date is established by the Association. The due date for Special Assessments or Capital Improvement Assessments shall be specified in the notice provided by the Association and if such Special Assessments or Capital Improvement Assessments are payable in installments, such installments normally shall be the first day of each month unless some other due date is established by the Association. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, an interest charge at the Applicable Rate and reasonable costs of collection, including attorneys' fees and costs, but which shall not in any event exceed the maximum rates permitted under California Civil Code Section 5600.

5.13 __Estoppel Certificate__. The Association on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating both of the following: (i) whether or not to the knowledge of the Association, a particular Owner is in default in connection with the payment of Assessments as to such Owner's Condominium under the provisions of this Declaration; and (ii) the dates to which installments of Regular Assessments, Special Assessments and/or Capital Improvement Assessments have been paid as to such Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of Assessments of which the signer had no actual knowledge.

5.14 __Collection of Assessments, Liens__.

5.14.1 __Right to Enforce__. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association The Board can enforce the obligations of the Owners to pay Assessments by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 5.14.6** enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights.

5.14.2 **Notice of Assessments and Foreclosure**. The Association shall distribute a written notice regarding Assessments and foreclosure as set forth in California Civil Code Section 5370 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

5.14.3 **Delinquent Assessments**. In collecting delinquent Assessments, the Association shall comply with the requirements of California law, including without limitation, California Civil Code Section 5650 As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Condominium, the Association shall: (i) notify the delinquent Owner of certain matters, and (ii) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required by California Civil Code Sections 5900 through 5920.

5.14.4 **Creation of Lien**. If there is a delinquency in the payment of any Assessment (other than a Compliance Assessment) any amounts that are delinquent, together with any Additional Charges, shall be a lien against each applicable defaulting Owner's Condominium upon the recordation in the Official Records of a notice of delinquent. Assessment (**"Notice of Delinquent Assessment"**) as provided in California Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record for the applicable Condominium for which the lien is being filed as provided in California Civil Code Section 5675.

5.14.5 **Assignment**. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 5735.

5.14.6 **Notice of Default; Foreclosure**. The Association can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700, *et seq.*, can cause the Condominium with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 5100, *et seq*. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made In connection with any such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Condominium or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board shall apply payments and follow the procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance) The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

5.14.7 **Payment of Assessments**. Any payments of sums due under this ARTICLE shall first be applied to Assessments owed, and only after Assessments owed have been paid in full shall the payments be applied to the Additional Charges. If an Owner requests a receipt after payment of a delinquent Assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

5.14.8 **Additional Charges** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Association including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent, subject to California Civil Code Section 5650, *et seq* .

5.15 **Waiver of Exemptions**. Each Owner, to the extent permitted by Applicable Law, waives, to the extent of any liens created pursuant to this ARTICLE, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment, becomes delinquent or any lien is imposed.

5.16 **Subordination of Lien to First Mortgages**. When a Notice of Delinquent Assessment has been recorded, such Assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, Assessments and other levies that, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Condominium subject to Assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any Assessments thereafter becoming due or from the lien of any subsequent Assessment Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Condominiums.

5.17 **No Offsets**. All Assessments shall be payable in the amounts specified by the particular Assessment and no offsets against such amounts shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement

5.18 **Personal Liability of Owner**. No Owner may exempt himself or herself from personal liability for Assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by itself from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

5.19 **Transfer of Property**. The selling Owner shall not be liable for any Assessment levied on a Condominium after the date of transfer of ownership and written notice of such transfer is delivered to the Association The selling Owner shall remain responsible for all Assessments and charges levied on his or her Condominium prior to any such transfer.

5.20 Failure to Fix Assessments. The omission by the Board to fix the Assessments hereunder before the expiration of any Fiscal Year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

5.21 Property Exempt From Assessments. The Association Property shall be exempt from the Assessments, charges and liens created herein. Although no land or improvements devoted to dwelling use in the Community shall be exempt from Assessments, Declarant and the Owners shall be exempt from paying any portion of Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence of any Improvements on the Association Property which are not complete at the time Assessments commence, which exemption shall be in effect only until the earlier to occur of the following: (i) a notice of completion for the subject Association Property has been recorded, or (ii) the Association Property has been placed into use.

5.22 Association Property Improvements. In the event that the Improvements to be installed by Declarant on the Association Property have not been completed prior to the issuance by the BRE of a Final Subdivision Public Report, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the Voting Power, excluding the Voting Power of Declarant, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the Voting Power, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

5.23 Initial Capital Contributions Upon acquisition of record title to a Condominium from Declarant, each such purchaser shall contribute to the capital of the Association an amount equal to $100.00. This amount shall be deposited by the purchaser into the purchase and sale escrow for his or her Condominium and disbursed therefrom to the Association or to reimburse Declarant for any capital contributions paid by Declarant to the Association for such Condominium The obligation set forth in this Section does not apply to the resale of any Condominium.

ARTICLE 6
USE RESTRICTIONS

6.1 Use Restrictions Applicable to Residential Condominiums.

6.1.1 **Residential Use**. Except as expressly provided in **ARTICLE 9** with respect to Declarant and as further provided below, each Residential Unit shall be used for residential purposes exclusively and no part of the Community shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose, without the prior written consent of the Board. In deciding whether to permit an otherwise nonconforming use hereunder, the Board shall consider the potential effect upon traffic in the Community and interference with or annoyance of neighbors; provided, however, a nonconforming use shall not be permitted unless such use is incidental to the residential use of the Condominium and is permitted by Applicable Laws. Any Owner seeking Board approval of the operation of an in-home business shall provide such information as may be reasonable for the Board to evaluate the potential effects of the business upon the residential character of the Community. Notwithstanding any provision of this Declaration, state law may expressly authorize the operation of in-home businesses of certain categories that meet specific criteria ("**State-Authorized Businesses**"). Any State-Authorized Business shall be operated according to Applicable Laws. Any Owner that intends to operate a State-Authorized Business within the Owner's Residential Unit, or to permit the operation of a State-Authorized Business within the Owner's Residential Unit, shall notify the Board in writing at least forty-five (45) days prior to commencement of such business. Such written notice shall include such information as may be reasonable for the Board to evaluate the potential effects of the business upon the residential character of the Community, and the Owner shall promptly provide additional information in writing as may be requested by the Board in connection with its evaluation of the effects of the State-Authorized Business on the Community provided, however, Declarant may use any of the Residential Units owned by Declarant as model homes, sales offices, construction offices or storage for the Community during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums are sold and conveyed by Declarant to separate Owners.

6.1.2 **Commercial Use**. Except for Commercial Units and as otherwise provided in this Declaration, including without limitation **Section 6.1.1**, no part of the Community shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

6.1.3 **Rental of Residential Units**. An Owner shall be entitled to rent the Residential Units subject to the restrictions contained in the Governing Documents and any contractual agreement between Declarant and each original Owner for such Owner's Condominium as to such parties, any other restrictions of record and all Applicable Laws. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with the Governing Documents, shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall be provided to the Association. Owners shall, at all times, be responsible for their Lessee's compliance with the Governing Documents. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Occupant have any voting rights in the Association No Owner may lease such Owner's Condominium for hotel, motel or transient purposes. Any lease which is either for a period of fewer than six (6) months or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. Under no circumstances shall any Residential Unit be advertised, made available or used in connection with any Internet-based short term stay program including without limitation "airbnb" or any similar service.

(a) **Actions Against Lessee**. Additionally, if any Lessee is in violation of the Governing Documents, the Association may, to the extent permitted by Applicable Laws and to the extent the Association determines such actions are necessary in its prudent business judgment, bring an action in its own name and/or in the name of the Owner to have the Lessee evicted and/or to recover damages. The Association shall give the Lessee and the applicable Owner at least twenty (20) days' prior written notice of the nature of the violation of the Governing Documents, and if such Owner or Lessee fails to cure the violation within such twenty (20) day period, then the Association may pursue its remedies under this Section. If the court finds that the Lessee is violating or has violated any of the Governing Documents, the court may find the Lessee in violation of the rental agreement and subject to an unlawful detainer action notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Lessee is not otherwise in violation of the Lessee's rental agreement. For purposes of granting an unlawful detainer against the Lessee, the court may assume that the Association is a third party beneficiary under the rental agreement and as such may exercise all the rights of the Owner thereunder The remedy provided herein is not exclusive and is in addition to any other remedies available to the Association. The Association may recover against the Owner all of its costs, including, without limitation, court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action If the Owner fails to pay such costs within thirty (30) days after receipt of written demand, the Association may levy a Compliance Assessment to recover the costs and attorneys' fees and any other Additional Charges.

6.1.4 **Time Sharing**. A Residential Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "**time sharing**") of measurable chronological periods The term "**time sharing**" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Residential Condominium, Condominiums or any portion thereof in the Community 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 six (6) months or less.

6.1.5 **Animals**. Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Community. No Owner shall keep more than a total of two (2) domestic dogs or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) within such Owner's Residential Unit Domestic reptiles, birds, rodents, and fish shall be permitted, so long as such animals are kept in the interior of a Residence. No animal shall be permitted to be maintained, at any time, within any recreational areas. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of pets. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed to constitute a nuisance to any other Owner or which constitutes a threat to personal safety Each Owner shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Community by such Owner or any Invitee of such Owner. Each Owner shall clean up after animals that have deposited droppings or otherwise used any portion of the Community or public street abutting or visible from the Property. Animals must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Residential Unit.

Animals shall not be left unattended on any Exclusive Use Deck Areas. In addition to the foregoing general restrictions regarding pets, breeds of dogs which may be kept within the Community may be restricted as set forth in the Rules Nothing contained herein shall constitute a restriction on human assistance animals.

6.1.6 **Signs and Displays**. No sign, advertising device or other display of any kind shall be displayed in a Residential Unit, except for the following:

(a) entry monuments or community identification signs maintained by the Association,

(b) for each Condominium, one (1) nameplate or similar Owner name or address identification which complies with the Architectural Guidelines;

(c) for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements, subject to California Civil Code Sections 712 and 713:

(i) the sign is a reasonable size; and

(ii) the sign is in compliance with the Architectural Guidelines or is otherwise authorized pursuant to **ARTICLE 8**;

(d) noncommercial signs permitted by California Civil Code Section 4710; and

(e) such other signs or displays authorized pursuant to **ARTICLE 8**.

In addition to the foregoing, all signs must comply with all Applicable Laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **ARTICLE 9**.

6.1.7 **Storage and Other Restrictions for Exclusive Use Areas**. No Owner shall use any Exclusive Use Area for storage purposes, including, without limitation, the storage of bicycles. Unless installed by Declarant, all plants kept in the Exclusive Use Areas shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of the Exclusive Use Areas, except as approved by the Board. The Board may require approval of any potted plants No Owner shall change or alter the surface of any Exclusive Use Area without the consent of the Board. Barbecues shall not be allowed on any Exclusive Use Area

6.1.8 **Water Beds and Limitations on Size of Aquariums**. No water beds shall be permitted in any Condominium and as specified above, no Owner shall maintain in its Condominium any aquarium or other container holding thirty (30) or more gallons of water. Each Owner acknowledges that substantial damage to other Units or Association Property may occur as a result of a violation of this restriction.

6.1.9 **Dryers**. All of the Residential Units are designed to accommodate only ventless clothes dryers. In addition, some of the Residential Units contain ventless dryers located within a built-in cabinet with a retracting door. These particular ventless dryers located in Units 3, 4, 6, 7, 8, 9 and 10 with the retracting door must have the door left open during operation. Closing the door during operation creates a fire hazard. In any event, dryers in every Residential Unit should be installed in accordance with the manufacturer's instructions for such dryer and in compliance with any venting specifications included in those instructions.

6.2 __Window Coverings__. Temporary window coverings are not permitted to cover any door or window of any Residential Unit at any time. The exterior surface of all window coverings shall be a shade of white.

6.3 __Rights of Disabled__. Subject to the provisions of **ARTICLE 8** and **ARTICLE 9**, each Owner may modify its Residential Unit and the route over the Association Property leading to the front door of its Condominium, at its sole expense, to facilitate access to its Condominium 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 Applicable Laws.

6.4 __Use Restrictions Applicable to the Commercial Condominiums__. The following restrictions shall be applicable to the Commercial Condominiums. The Commercial Condominiums shall not be occupied and used except for commercial purposes by the Owners or Occupants. For purposes of this Section, "commercial purposes" shall include retail sales businesses, offices, physical fitness and service business, including, among others, a food service business. All uses must comply with applicable federal, state and local laws and regulations.

6.4.1 __Prohibited Uses__. The Commercial Condominiums shall not be used for an activity or purpose considered by the Association to pose a safety hazard or health risk within the Community including but not limited to, the following:

(a) Any noise or sound that is determined by the Board to be unreasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;

(b) Any noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance;

(c) Any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks;

(d) Any distillation or refinery facility (excepting therefrom any microbrewery or similar business);

(e) Any dumping of garbage or refuse, except in places designated for disposal by the Association;

(f) Any motorized vehicle repair shop, automobile dealership or automotive supply store;

(g) Any car wash;

(h) Any pool hall, video or game arcade or betting facility,

(i) Any indecent or pornographic uses, massage parlor, adult bookstore, peepshow store, strip clubs or any other similar store or club; and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;

(j) Any tattoo parlors or body piercing;

(k) Any cannabis club or medical marijuana dispensary;

(l) Maintaining or keeping of any animals;

(m) Any laundromat, surplus or thrift store, or bankruptcy sale;

(n) Any place of religious worship; and

(o) Any dry cleaning facility or store, except that a "drop off" for dry cleaning shall be permitted so long as the actual dry cleaning is conducted at a site outside the Community.

6.4.2 **<u>Advertising</u>**. No Owner or Occupant shall do the following without the prior written consent of the Board: (i) employ an advertising medium which can be heard or experienced outside of the Commercial Unit, including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, compact disk players, radios or television; or (ii) distribute, or cause to be distributed, any handbill or other advertising device in the Association Property Identification and other signage shall be governed by **Section 6.4.6.**

6.4.3 **<u>Commercial Invitees and Occupants; Insurance</u>**. The Commercial Owner shall be responsible for compliance by their commercial Invitees and Lessees, and their Lessees' commercial Invitees, with the provisions of the Governing Documents The Owners or their Lessees shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use of a Commercial Unit, and shall demonstrate proof of such insurance to the Board annually upon request. Any Lease shall be in writing, shall provide that the lease or rental is subject to the Governing Documents and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the Lease. A copy of the Governing Documents shall be made available to each Lessee by the Owner so renting or leasing. The Commercial Owners shall, at all times, be responsible for their Occupant's compliance with all of the provisions of the Governing Documents. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Owner may lease a Commercial Condominium for a period less than thirty (30) days, or for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. If the Commercial Condominium is rented, then the Owner shall submit names and contact numbers for their Lessees to the management company for the Community

6.4.4 **<u>Unoccupied Commercial Condominiums</u>**. During any period that a Commercial Condominium is unoccupied, the Owner shall take such reasonable steps as required by Declarant, or by the Board after Declarant no longer owns any interest in the Community, to keep those portions of the Commercial Condominium visible from public areas from appearing abandoned, including, without limitation, installation of smoked glass on windows or glass doors visible from public areas, free of stored materials, clean and otherwise maintained such that it is not readily apparent that business is not being conducted therein

6.4.5 Restrictions on the Commercial Units. Except as otherwise stated herein or in the Architectural Guidelines, the Board may not restrict the reasonable use of a Commercial Unit as provided for herein. All uses shall be in conformity with the zoning ordinances of the City. Commercial uses by their nature create a variety of impacts that would not occur, or would occur to a lesser degree, in a community with only residential uses. Such impacts include, without limitation, vehicular and pedestrian traffic, light, noise, odors and pests. The benefits of living in a mixed-use community with commercial uses are deemed to outweigh the additional impacts from such uses. The Commercial Owners shall comply with the restrictions set forth below.

(a) All utilities serving the Commercial Units shall be metered or sub-metered separately from the utilities servicing the Residential Condominiums, and

(b) If a commercial use causes an increase in the cost of insurance required to be maintained by the Association for any portion of the Community, such Commercial Owner shall pay the Association an amount equal to such increase

(c) The Owner or Lessee of a Commercial Condominium shall make commercially reasonable efforts to minimize disturbances to the Residents from noise or odors and from the use of outdoor seating at a Commercial Unit being used as a restaurant. Any lighting installed shall be directed away from the Residential Units. Notwithstanding the foregoing, normal conversation levels and food odors are expected in these areas, and shall be permitted subject to any further restrictions set forth in the Association Rules (including restrictions on hours of operation in) and shall not be deemed a nuisance.

6.4.6 Signage. The Owner or Lessee of a Commercial Condominium shall have the right to display reasonable identification and other commercial signs on or in the Commercial Condominium and on the exterior wall enclosing the Commercial Condominium consistent with the permitted commercial use, in accordance with Applicable Laws and the Signage Guidelines. Commercial signage which is in compliance with the Signage Guidelines set forth in the Community Handbook shall not be subject to Architectural Review. In addition, so long as Declarant owns any interest in the Community, all identification and other commercial signs (and any changes thereto) are subject to the prior written approval of Declarant. Notwithstanding the foregoing, Declarant shall have the right set forth in **ARTICLE 9** to erect and maintain within the Community (i) job identification signs during the time of construction of any portion of the Community; and (ii) signs, flags, banners and other promotional devices used by Declarant for the purpose of developing, improving and selling Condominiums.

6.4.7 Hold Harmless and Indemnity. The Owner assumes all risks which may result from Improvements it makes to a Commercial Condominium, and shall indemnify and hold harmless the Association, Declarant and each other Owner from any claims, actions, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of Improvements in the Commercial Condominium.

6.4.8 Alarms. Any alarm installed in a Commercial Unit shall be the type of alarm which is monitored by a certified alarm company

6.5 Use Restrictions Applicable To All Condominiums.

6.5.1 Inside and Outside Installations.

(a) **Declarant Exemption** This Section does not apply to Improvements installed by Declarant.

(b) **Inside Installations**. Nothing may be done in any Condominium or in, on or to the Association Property which may impair the structural integrity of the Building or which structurally alters the Building except as otherwise expressly provided in this Declaration.

(c) **Vibrations**. No Owner shall attach to the walls or ceilings of any Unit any fixtures or equipment which will cause unreasonable vibrations or noise or unreasonable annoyance to the Owners of the other Units.

(d) **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 Board and all other Governmental Agencies.

(e) **Awnings, Etc**. No awnings, ornamental screens, screen doors, sunshades, or umbrellas of any nature shall be erected or maintained on or around any portion of the Building or elsewhere within the Community except those that are installed in accordance with the original construction of the Community or as are authorized and approved by the Board.

(f) **Exterior Lighting**. No exterior lighting shall be installed other than the lighting initially installed by Declarant. Any exterior electrical, gas or other artificial lighting installed on any Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the Occupants of any other Units. Further rules regarding exterior lighting may be promulgated by the Board. Some of the exterior lighting on the Building provides light to certain exterior portions of the Community and may contain a photocell or operate on timers. The exterior lighting should not be manually turned off or altered in any way by the Owners.

6.5.2 **Outside Drying and Laundering** No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Community and there shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Easement or Association Property.

6.5.3 **Air Conditioning Units** No air conditioning units shall be placed on the exterior of the Building, including without limitation, upon the exterior of any window bordering a Unit.

6.5.4 **Basketball Standards**. No basketball standards or fixed sports apparatus shall be attached to the exterior of any Condominium.

6.5.5 **Governmental Entitlements**. Each Owner and the Association shall comply with all applicable requirements and restrictions set forth in the Governmental Entitlements

6.5.6 **Trash Disposal**. Residential trash, garbage or other waste shall be deposited only in the trash chutes, trash rooms and receptacles maintained in the Association Property. No Residential Owner shall permit or cause any trash or refuse to be kept on any portion of the Community other than in the receptacles customarily used for it, which, shall be located only in places specifically designated for such purpose. Commercial Owners shall arrange for their own trash disposal at their own cost in accordance with **Section 7.3.2**.

6.5.7 **View Impairment**. There is no representation that any view exists from any Unit. Each Owner, by accepting a deed to a Unit, acknowledges that: (a) there are no protected views, and no Unit is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Units, (b) any view from the Unit is not intended as part of the value of the Units and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other Owners or of properties surrounding the Community may impair the view from any Unit and/or may allow other Persons to have a line of sight into Owner's Units, which may affect the use and enjoyment of the Owner's Units, including Owner's privacy. There are no express or implied easements appurtenant to any Unit for view purposes or for the passage of light and air over another Unit, or any other property whatsoever. In addition, views from a Unit may be further impacted by the terms and conditions of that certain Declaration of Restrictions and Recordation of Easements (No-Build Light and Air Easement and Access Easement) recorded in the Official Records of the City and County of San Francisco on June 25, 2013 as Document No. 2013-J695101-00.

6.5.8 **Offensive Conduct, Nuisances**. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become a nuisance to the Residents. Commercial uses in the Commercial Units which are permitted by this Declaration shall not be deemed a nuisance if conducted in accordance with the Rules. Front doors to the Residential Units shall remain closed except for access to and egress from the Residential Units.

6.5.9 **Sound Attenuation**. In any mixed-use Community, sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background sound in an adjacent Unit is very low. These sounds may include without limitation, music, voices, animal noises, footsteps, noises from children, furniture movement, appliance usage, water usage and other sounds. To minimize the sound transmission from a Unit, each Owner shall adhere to the following:

(a) On demising walls (party walls), acoustical sealant shall be packed around the point of penetration of all pictures and other decorative items hung from the wall that require nailing or screwing. No holes or other penetrations shall be made in demising walls except for decorative items without the permission of the Board or Architectural Committee. No penetrations of any sort shall be made in the ceilings of any Residential Unit.

(b) No modifications shall be made to any Residential Unit which would result in a reduction in the minimum impact insulation class of the Residential Unit.

(c) No Owner shall attach to the walls or ceilings or place on the floor of any Unit anything which will cause unreasonable sound levels, vibrations, noise or annoyance to the Owners of the other Units. No audio, television, stereo, speakers, or other audio visual or media equipment shall be installed directly in or on any demising wall without the permission of the Board. Nothing in this Section shall prohibit the installation of such equipment on an arm which is attached to the demising wall. Speakers for audio, television, stereo, or other audio visual or media equipment shall not be supported from or contact demising walls and shall be elevated from the floor by an adequate acoustic platform. Sound from such speakers must be kept at a reasonable level so as not to interfere with other Occupants' enjoyment of their Units.

(d) Pianos shall have adequate acoustic pads under the supports to minimize vibration transmission into the structure

(e) All furniture shall have roller castors or adequate acoustic pads.

(f) No Owner shall install any hard surface or other flooring or make any other modification to any part of their Condominium which may increase sound transmission between their Condominiums and other part of the Community, including without limitation, tile or hardwood floors and wall or ceilings coverings, unless the prior written approval of the Board has been obtained. As a condition to approving the installation of such modifications, the Owner shall submit to the Board construction specifications clearly describing the proposed modifications in sufficient detail necessary to determine whether sound transmission will be sufficiently mitigated.

6.5.10 **Fire Prevention and Fire Sprinkler Systems**. No Owner shall remove, alter or impair or tamper or interfere with the proper operation of any fire prevention or fire sprinkler equipment installed by Declarant in the Owner's Unit.

6.5.11 **Drainage and Erosion Control**. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. For the purpose hereof, "established" drainage is defined as the drainage that exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Board Each Owner shall regularly inspect and, if necessary, clean out any drainage facilities located within such Owner's Exclusive Use Areas. If such Owner fails to maintain such drainage and as a result, imminent danger to Persons or property may result, then the Association shall have the right of access onto the Condominium for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to Persons and property and the entering party shall use reasonable care so as to not cause any damage to the Condominium. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to the provisions of this Declaration.

6.5.12 **Mechanic's Liens**. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Compliance Assessment for such cost of discharge.

6.5.13 **Antenna Restrictions**. Except as provided in this Section, no Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S C. §§ 1 *et seq.*, 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated with respect thereto (collectively "**Antenna Laws**"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (iii) above, such Owner may do so only upon the prior approval of the Board pursuant to **ARTICLE 8**. The Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws.

6.6 Compliance with Requirements Regarding Community Stormwater Pollution. Each Owner acknowledges that water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("**NPDES**"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or stormwater conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Unit or Exclusive Use Area into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all requirements of any Governmental Agencies All Owners and the Association are required to comply with such restrictions. Owners are encouraged to consult with the Governmental Agencies concerning the proper disposal of any Hazardous Materials

6.6.1 Stormwater Pollution Prevention Best Management Practices. To comply with the requirements of the Governmental Agencies in connection with the stormwater pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located within a Unit, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris and in accordance with any Best Management Practice Agreements that are recorded or may be recorded against the Community and the Stormwater Maintenance Agreement. The Association and the Owners shall comply with all applicable Best Management Practices ("**BMP**") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be Common Expenses.

6.6.2 Liability to Declarant So long as Declarant owns any Condominium, if an Owner or the Association is not in compliance with the provisions of this Section and, as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the Unit or Exclusive Use Area to correct such violation. Except in the event of an Emergency, in which case no notice shall be required, Declarant shall provide twenty-four (24) hours prior notice of such entry. Any Owner who violates the requirements of this Section and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall within fifteen

(15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

6.7 __Post Tension Slabs__ The concrete slabs on the podium level of the Building are reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "**Post Tension Slab.**" Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium and/or personal injury. By accepting a grant deed to a Residential Condominium on the podium level, each Residential Owner of a Unit on the podium level specifically covenants and agrees that: (1) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (2) such Residential Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Residential Owner owns any interest in the Condominium; and (3) such Residential Owner shall disclose the existence of the Post Tension Slab to any tenant, Occupant or subsequent purchaser of the Condominium. Any Residential or Commercial Owner who penetrates the Post Tension Slab shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from such penetration.

6.8 __Roof: Access Restrictions__ Except as otherwise expressly permitted hereunder, Owners and their Invitees, shall not at any time or for any reason whatsoever enter upon or attempt to enter upon (i) the areas of the roof of the Building which are restricted from access, except if necessary to maintain the mechanical or utility systems servicing the Commercial Condominiums, in which case access shall only be granted by the Association to approved licensed service contractors; (ii) any portion of the Association Property used by the Association for management, administrative, or other purposes, and (iii) utility closets and rooms, without the prior approval of the Board Approved contractors shall be granted roof access only on the condition that such contractors comply with all Applicable Laws and/or safety ordinances with regard to the use of harnesses or other safety equipment

6.9 __Compliance with Laws, Etc__. Nothing shall be done or kept in any Unit or in the Association Property that might cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner or the Association shall permit anything to be done or kept in its Unit or on the Association Property that violates Applicable Laws pertaining to the use or storage of any hazardous, contaminated or toxic materials.

6.10 __Exemption of Declarant__. The restrictions set forth in this ARTICLE shall not apply to Declarant or any Declarant Parties so long as Declarant or any Declarant Parties own any portion of the Property, or so long as Declarant is exercising any of its rights under **ARTICLE 9** or any other rights or powers or easements reserved to Declarant

ARTICLE 7
__MAINTENANCE__

7.1 __Maintenance and Repair__. Unless the context otherwise requires, as used in this ARTICLE and the Maintenance Responsibility Chart, "maintenance", "maintain" or "maintaining" means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance by the Association and/or the Owners To the extent repair, restoration and replacement is required as a result of damage or destruction under

ARTICLE 11, then the repair and replacement shall be governed by the provisions of **ARTICLE 11**.

7.2 **Maintenance Exhibit**.. The Maintenance Responsibility Chart attached hereto identifies certain maintenance responsibilities of the Association and the Owners. In the event of a conflict between the maintenance responsibilities' set forth in this ARTICLE and the Maintenance Responsibility Chart, the provisions of this ARTICLE shall control.

7.3 **Maintenance Obligations**.

7.3.1 **Maintenance Obligations of Residential Owners**. Each Residential Owner is responsible for the care and maintenance of those components of such Owner's Residential Unit and Exclusive Use Area designated for maintenance by the Residential Owner on the Maintenance Responsibility Chart and the applicable Owner Maintenance Manual.

7.3.2 **Maintenance Obligations of Commercial Owners/Occupants**.

(a) **Commercial Units**. The Commercial Owners shall perform the maintenance and other obligations set forth in the Maintenance Responsibility Chart and the applicable Owner Maintenance Manual, if any, in accordance with the requirements and schedules set forth in the Owner Maintenance Manual; and

(a) **Trash; Utility Facilities**. The Occupants of the Commercial Area are responsible for disposing of their own trash in the area of the Association Property designated for such purpose as depicted on **Exhibit "F"** attached hereto. No Commercial Occupant may store or dispose of its trash within the area of the Association Property designated for disposal of trash by the Residential Units. The Commercial Occupants may not co-mingle their trash with that of the Residential Owners Each Commercial Owner shall be responsible for maintaining the Utility Facilities exclusively servicing the Commercial Owner's Condominium and located either within or outside the perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Commercial Owner and not in common; provided, however, that the Association shall have the right, but not the obligation, to undertake the maintenance of such Utility Facilities when located within Association Property and to levy a Compliance Assessment against the Commercial Owner as provided in **Section 5.7**.

7.4 **Manner of Maintenance**.

7.4.1 **Quality of Maintenance** All maintenance work required to be undertaken by the Association or Owners hereunder shall (a) be performed in a first class and workmanlike manner in accordance with good maintenance practices and in compliance with all Applicable Laws and the Maintenance Obligations. Any such work shall be performed to the extent reasonably practicable, to minimize any noise, vibration, particulates and dust infiltration or other disturbances which would unreasonably disturb Owners or Occupants. Maintenance of any Exclusive Use Areas by an Owner shall be conducted in such a manner to prevent any damage to other portions of the Community.

7.4.2 **Compliance with Maintenance Obligations**. Each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Owner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Condominium.

7.4.3 Owner's Failure to Maintain. If an Owner fails to maintain the areas and items as provided above or make repairs thereto as required under the Governing Documents, the Association shall give written notice to such Owner, stating with particularity the work or maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Association shall cause such work to be completed and shall assess the cost thereof to such Owner as a Compliance Assessment in accordance with the procedures set forth in this Declaration.

7.4.4 Emergency Maintenance. If the Association determines that a maintenance deficiency constitutes an Emergency which requires action prior to the expiration of any cure period, the Association may take the actions provided for in this Section without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the Emergency action the Association gives a Notice of Deficiency (without providing a cure period) to the Owner.

7.5 Maintenance Obligations of Association The Association is responsible for the care and maintenance of the Association Property and those components of the Community designated for maintenance by the Association on the Maintenance Responsibility Chart. The Association shall keep such portions of the Community in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas in accordance with the Maintenance Obligations. In addition, the Association is responsible to maintain the stormwater management controls installed by Declarant for the Community in accordance with the Stormwater Maintenance Agreement. The Association shall also be responsible for maintaining any Improvements that a majority of the Board or a majority of the Voting Power designates for maintenance by the Association All costs incurred by the Association in performing the Maintenance Obligations shall be paid for as Common Expenses.

7.5.1 Duty to Protect Against Mechanics' Liens. In performing their Maintenance Obligations; the Association and the Owners (for the purposes of this Section, the **"Contracting Party"**, as applicable) shall each promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Community or the construction of any Improvements authorized or undertaken by the Contracting Party. The Contracting Party shall not cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the Community or any Owner by the Contracting Party If any Contracting Party causes a lien to be filed, such party shall: (i) immediately either cause the lien to be discharged within ten (10) days after notice to such responsible party by the Association or Owner or post a bond which protects the title of the affected Owners, (ii) indemnify, protect, defend and hold harmless the other Owners and/or the Association, as applicable, from any loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Community or the other Owners or such Owner's Condominium for such work or services performed or materials supplied by any architect, engineer, contractor or any other Person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (iii) pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims by another Owner and any costs of enforcing this indemnity. Notwithstanding the foregoing, the contractors or subcontractors of Declarant may be contractually obligated to maintain the landscaping or other Improvements on the

Association Property pursuant to warranties or other existing contractual obligations to Declarant. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations.

7.6 Liability to Declarant. So long as Declarant has any obligation or liability under any permits filed by Declarant with any Governmental Agency, if an Owner or the Association is not in compliance with the provisions of this ARTICLE and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the applicable portion of the Community to correct such violation. If the Association or any Owner violates the requirements of this Section, the Association or Owner shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, but without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation of this ARTICLE

7.7 Inspection of the Community. The Association shall regularly inspect the Association Property, including without limitation, the landscaping, drainage and irrigation systems serving or within the Association Property. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing such inspections and follow any recommendations and schedules contained in the Association Maintenance Manual. Until the end of the Statutory Claims Period, the inspectors shall provide written reports of their inspections to the Association and, to Declarant promptly following completion thereof. Until the end of the Statutory Claims Period, the Association shall provide Declarant with at least ten (10) business days' advance notice of any such inspection, and Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis Such written reports shall specifically include a review of all irrigation and drainage systems located within the Association Property. The Association shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Association shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes Should such inspection require the inspection of any Residential Unit, there is hereby created a non-exclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days' advance notice to the Owner, except in case of Emergency Any damage to any structure, landscaping or other Improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

ARTICLE 8
ARCHITECTURAL REVIEW

8.1 **Non-Applicability to Declarant**. The provisions of this ARTICLE shall not apply to any Improvements installed by Declarant, and neither the Board nor the Architectural Committee shall have any rights of review or approval with respect thereto.

8.2 **Amendments**. Notwithstanding the provisions of **ARTICLE 14**, no amendment, to or rescission of this ARTICLE shall be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Community prior to the conveyance by Declarant, or its successor, of the last Condominium to a First Purchaser without (a) the written consent of Declarant, and (b) the recording of such consent in the Official Records.

8.3 **Scope**. To the extent that an Owner is entitled under this Declaration to modify its Unit in any manner following review and approval by the Board, no Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Unit or any Exclusive Use Area, and no installations of hard surface flooring within the Residential Units shall be commenced until complete plans and specifications showing the nature, kind, shape, height and materials, including the color any other requirements set forth in the Architectural Guidelines (**"Plans and Specifications"**), have been submitted to and approved in writing by the Board.

8.3.1 **Commercial Work**. Notwithstanding anything to the contrary set forth in this Declaration, the scope of the Board's review of Plans and Specifications of any work within a Commercial Condominium shall be limited to compliance with the Architectural Guidelines. In addition, in no event shall the Board deny approval to any work proposed by the Owner of a Commercial Condominium that is reasonably necessary to use the Commercial Condominium in accordance with the provisions of this Declaration, provided that such work does not (i) impair the structural integrity of the Building, (ii) affect another Owner's Unit or the Association Property, and (iii) materially and adversely affect the aesthetic quality of the exterior of the Community.

8.4 **Architectural Guidelines**. The Board may, from time to time and in accordance with Civil Code Section 4355, *et seq.*, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Guidelines adopted shall include guidelines applicable to the Residential Condominiums and guidelines applicable to the Commercial Condominiums In addition, no portion of the Architectural Guidelines applicable to the Commercial Condominiums shall be amended, changed or modified without the approval of the Owners of a majority of the Commercial Share. The Architectural Guidelines shall not be in derogation of the standards required by this Declaration and shall be in Compliance with all Applicable Laws including without limitation, Section 4720 and Section 4735 of the California Civil Code.

8.5 **Approval of Plans and Specifications**.

8.5.1 **Submittal of Plans**. Any Owner proposing to construct Improvements or taking other actions requiring the prior approval of the Board pursuant to this Declaration shall apply to the Board for approval by submission of Plans and Specifications and any review fee required pursuant to the Architectural Guidelines The Owner shall also provide evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Architectural Guidelines, and comply with all Applicable Laws (**"Application"**).

8.5.2 <u>**Time Periods for Review**</u>. Within forty-five (45) days after proper application for approval, the Board shall consider and act upon such request. In the event the Board fails to approve or disapprove Application within forty-five (45) days after all documents, information and fees imposed by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such Application within fifteen (15) days after the receipt of notice said Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this ARTICLE and are in harmony with similar structures within the Community In granting or denying approval, the Board may give the Owner such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Owner.

8.5.3 <u>**Effectiveness of Final Approval**</u>. The approval shall be effective for twelve (12) months from the date of issuance In the event construction does not commence within such twelve (12) month period, the approval shall be deemed to have expired and a new approval pursuant to the provisions of this **ARTICLE 8** must be obtained.

8.5.4 <u>**Approval of Solar Energy Systems**</u>. Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5 shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that 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 costs, efficiency, and energy conservation benefits.

8.5.5 <u>**Approval of Modifications to Accommodate Disabled Owners**</u>. Any Owner proposing to install Improvements or make modifications to such Owner's Residential Unit or the Association Property leading to such Owner's Residential Unit to facilitate access for persons who are blind, visually handicapped, deaf or partially disabled, or to other conditions which could be hazardous to such persons shall be subject to the same review and approval requirements as any Owner proposing to construct Improvements or other actions requiring approval of the Board pursuant to this Declaration; provided, however, that the Board shall not deny approval of the proposed modifications without good cause

8.5.6 <u>**Compliance With California Civil Code Section 4765**</u>. In approving Plans and Specifications submitted to it pursuant to this ARTICLE, the Association shall comply with the requirements of California Civil Code Section 4765

8.6 <u>**Inspection and Correction of Work**</u>. Inspection of work and correction of deficiencies therein shall proceed as follows:

8.6.1 <u>**Right of Inspection During Course of Construction**</u>. The Association or its duly authorized representative may enter into any Residential Unit, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting the construction or installation, provided that such entry is in compliance with **Section 3.3.4** If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such non-compliance. The Board may not enter into a Residential Unit without obtaining the prior permission of the Occupant; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry during daylight hours within forty-eight (48) hours of the request for entry.

8.6.2 **Notice of Completion**. Upon the completion of any Improvements for which approved Plans and Specifications are required under this ARTICLE, the Owner shall give written notice of completion thereof to the Association.

8.6.3 **Inspection**. Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Residential Unit, as provided in **Section 8.6.1**, to inspect the Improvements to determine whether they were constructed, reconstructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance

8.6.4 **Non-Compliance**. If, upon the expiration of thirty (30) days from the date of notification of non-compliance, the Owner shall have failed to remedy such non-compliance, the Board, after affording the Owner Notice and Hearing, shall determine whether there is non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner, the Board shall levy a Compliance Assessment against such Owner for reimbursement.

8.6.5 **Failure to Notify**. If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

8.7 **Government Regulations**. If there is any conflict between the requirements or actions of the Board and the Applicable Laws relating to the Property, to the extent that such Applicable Laws are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the Applicable Laws provided, however, that if the Applicable Laws are less restrictive, the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other Applicable Laws, or public utility requirements (hereinafter collectively referred to as "**Additional Requirements**") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of the Governing Documents, the provision of the Governing Documents shall nonetheless apply.

8.8 Diligence in Construction. Upon approval by the Association of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

8.9 Fee for Review The Board shall have the right to establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this ARTICLE. The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

8.10 Interpretation. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

8.11 Appeal. If an Architectural Committee is appointed and the Architectural Committee disapproves any Application, the Applicant may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the Owner If the Board renders a written decision, the decision of the Board shall be binding and final.

8.12 Waiver. The approval by the Association of any Application, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar or subsequently Application

8.13 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall issue an estoppel certificate, executed by a majority of its members stating (with respect to any Unit) that as of the date thereof, either: (a) all Improvements made and other work completed comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such Persons deriving any interest through them.

8.14 Liability. Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Community or any property within the Community; or (d) the execution and filing of an estoppel certificate pursuant to **Section 8.13** whether or not the facts therein are correct, provided, however, that such Board or Architectural Committee member has acted in good faith on the basis of such information as they may possess. Without in any way limiting the generality of the foregoing, the Board or Architectural Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Application to the Board or Architectural Committee, as the case may be

8.15 Variances. The Association may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, or placement of Improvements or other similar restrictions, when circumstances such as aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board and shall become effective upon execution. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all Applicable Laws affecting its use of the Unit, including, without limitation, requirements imposed by Governmental Agencies. In no event shall a variance allow a greater sound transmission level than would otherwise be permitted by the Governing Documents.

8.16 Appointment of Architectural Committee The Board shall have the right to delegate its review and/or approval rights under this ARTICLE to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of a minimum of three (3) members and a maximum of five (5) members. One (1) alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee If an Architectural Committee with three members is appointed, until such time as the Owners, other than Declarant, own ninety percent (90%) or more of the Condominiums, or five (5) years after the original issuance of the Public Report, whichever first occurs, the right to appoint and remove all Architectural Committee members and alternate members of the Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association; provided, however, that after one (1) year from the issuance of the Public Report, a majority of the Board shall have the right to appoint one (1) member to the Architectural Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Architectural Committee, said right shall be vested solely in the Board. Members of the Architectural Committee appointed by the Board shall be Members of the Association (other than a design professional, if any). Members appointed to the Architectural Committee by Declarant need not be Members of the Association. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the minutes of the Association of each new Architectural Committee member or alternate member appointed and each member or alternate replaced or removed from the Architectural Committee.

8.17 Compensation. The members of any Architectural Committee appointed by the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board

ARTICLE 9
DEVELOPMENT RIGHTS

9.1 Limitations of Restrictions. Declarant is undertaking the work of developing Condominiums and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums are essential to the establishment and marketing of the Property as a first-class condominium community. In order that the work may be completed and the Community be established as a fully occupied condominium community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this ARTICLE

9.2 Rights of Access and Completion of Construction. Until the third (3rd) anniversary of the original issuance of a Public Report, Declarant, its contractors and subcontractors shall have the rights set forth below, which rights shall be exercised in such a manner as reasonable to minimize interference with the conduct of any business in the Commercial Condominiums.

9.2.1 Access. Declarant, its agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property or to do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Community and the development, marketing and maintenance thereof, and Declarant and its contractors and subcontractors shall have such rights of access over and across the Association Property for purposes of satisfying any obligation of Declarant that Declarant has secured by a bond in favor of any Governmental Agency

9.2.2 Construct Improvements. Declarant, its agents, contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Unit owned by it such structures or Improvements, including, without limitation, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Community as a mixed use community and dispose of interests in the Community by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant in favor of any Governmental Agency.

9.2.3 Grant Easements. Declarant, its agents, contractors and subcontractors shall have the right to establish and/or grant on, over, under and across the Association Property such easements and rights of way for the benefit of any Governmental Agency, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, trails, parkways and park areas; (ii) poles, wires and any necessary attachments for transmission of electricity, providing telephone service and cable television service to the Community; and (iii) public and private sewers, sewage disposal systems, stormwater drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all related equipment. The Association Property shall be subject to any dedication stated in the Condominium Plan or on the Final Map of an easement for public use for installation, maintenance and operation of facilities for public utilities Said public utilities easement shall inure and run to all franchised utility companies and to any Governmental Agency and shall include the right of ingress and egress over the Association Property by vehicles of any Governmental Agency and such utility companies to properly install, maintain, repair, replace and otherwise service such Utility Facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or Governmental Agency for maintenance or operation of any of the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except for those Improvements owned by the utility companies or Governmental Agency, and except as occasioned by the negligence or willful misconduct of the utility companies or the City or the County of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City and County furthermore are granted a non-exclusive easement across the Association Property for ingress and egress for use by emergency vehicles of the City or County.

9.2.4 **Use of Residential Facilities**. Declarant shall have the right to reasonably use any Residential Facilities for promotional and other marketing activities and Declarant shall have the right to reasonably display or show any Residential Facilities to prospective purchasers.

9.3 **Size and Appearance of Community**. Declarant shall not be prevented from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Community in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law. The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion.

9.4 **Marketing Rights**. Declarant shall have the right to: (i) maintain model homes, sales offices, the Sales Trailer, customer service offices, storage areas and related facilities in any unsold Condominiums or Association Property and/or on property adjacent to the Community that will require access over, on and through the Association Property, as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Condominiums; (ii) make reasonable use of the Association Property and facilities for the sale of Condominiums; (iii) post signs, flags and banners, billboards, balloons and banners and other advertising and promotional devices which Declarant may, its sole discretion, deem appropriate in connection with its marketing and/or development of any portions of the Community; and (iv) conduct its business of disposing of Condominiums by sale, lease or otherwise.

9.5 **Title Rights**. The rights of Declarant may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to Governmental Agencies, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

9.6 **Amendment**. The provisions of this ARTICLE may not be amended without the consent of Declarant until all of the Condominiums in the Community owned by Declarant have been conveyed.

9.7 **Supplementary Condominium Plans and Supplementary Declarations**. So long as Declarant or a Declarant Party owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by Declarant, without the consent of any Owner, for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded After Declarant no longer owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by the Association for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded.

9.8 **Control of Access into the Community** Declarant shall have the exclusive right to control all aspects of the operation of any and all Community entry facilities, if any, (including, without limitation, locking the Community entry facilities in an open position for sales purposes, and opening any or all of the Community entry facilities to provide access for construction traffic in accordance with Applicable Laws) until development of the Community has been completed and Declarant has concluded its sales, leasing or other marketing programs Consequently, access into the Community may be open to the public for an extended period of time. At such time as Declarant relinquishes its right to control the operation of all of the Community entry facilities, such facilities will be owned, operated and controlled by the Association

9.8.1 **No Representation Regarding Security**. The Community entry facilities are not intended to provide, and should not be construed as providing, guard or security services to any person or property within the Community. Declarant does not provide or attempt to provide security within the Community and does not make any representations or warranties whatsoever as to the adequacy of the Community entry facilities in providing privacy or limiting access into the Community.

ARTICLE 10
INSURANCE

10.1 Association's Insurance Obligations.

10.1.1 **Liability Insurance**. The Association shall obtain and maintain liability insurance providing coverage at least as broad as a current Insurance Services Office, Inc. ("**ISO**") commercial general liability insurance form or its equivalent (including coverage for medical payments and coverage for owned and non-owned automobiles, if applicable), insuring the Association, the Declarant (as long as Declarant is the Owner of any Property and/or has any rights under **ARTICLE 9**) and the Owners against liability arising from the ownership, operation, maintenance and use of the Association Property by the Association and the performance by the Association of its duties under this Declaration. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall not be less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate and shall at all times meet or exceed the minimum requirements of Section 5805 of the California Civil Code. Such insurance shall include coverage against water damage liability, a broad form named insured endorsement, if reasonably available as determined by the Board, and may include coverage against any other liability customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Board, a cross-liability of severability or interest endorsement insuring each insured against liability to each other insured.

10.1.2 **Property Insurance**. The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring (1) all Association Property, including fixtures and building service equipment and (b) all personal property owned or maintained by the Association except the Residential Owner Insured Property or Commercial Owner Insured Property as described in **Section 10.2.1(a)** and **(b)** (collectively, the "**Association Insured Property**"). Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property, as determined annually by the Board. Such coverage may exclude land, foundations, excavations, and other items typically excluded from property insurance coverage on properties similar in construction, location and use.

(a) **Course of Construction**. Whenever any Improvements or alterations to the Association Insured Property are in the course of construction, the insurance required under this Section, shall be carried by the Association in builder's risk form written on a completed value basis, insuring against loss to the extent of at least the full replacement value of the Association Insured Property (excluding foundations and footings, except for earthquake coverage) of the Property being covered.

(b) **Payment of Insurance Proceeds** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Association or an insurance trustee ("**Trustee**") to be held in trust for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the County that agrees in writing to accept such trust.

(c) **Earthquake Insurance**. **ALL PARTIES ACKNOWLEDGE THAT EARTHQUAKE INSURANCE IS NOT INCLUDED IN THE BUDGET AND IS NOT BEING OBTAINED BY DECLARANT FOR THE BENEFIT OF THE OWNERS OR THE ASSOCIATION. NEITHER DECLARANT NOR THE ASSOCIATION IS OBLIGATED TO MAINTAIN EARTHQUAKE INSURANCE ON THE ASSOCIATION PROPERTY OR ANY PORTION THEREOF. Declarant or any Owner (and/or their respective lenders) may maintain earthquake insurance for their own benefit, but the premiums therefor may not be included by Declarant or the Association in the Assessments. Notwithstanding the foregoing, at such time as the Board is no longer controlled by Declarant, the Association may, in its discretion, (but without any obligation to do so) obtain earthquake insurance from time to time, on those portions of the Community that are to be insured by the Association as provided in this Declaration, and if so obtained, the premiums for such insurance may be included in the Assessments. All parties acknowledge that earthquake insurance is typically very expensive and if purchased by the Association a material increase in Assessments may be required to cover the additional cost of such insurance.**

(d) **Primary**. With respect to Association Insured Property, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(e) **Endorsements**. The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, pollution claims including mold, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(f) **Adjustment of Losses**. The Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Association. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any property damage under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Association or enforce any such claim by legal action or otherwise and to execute releases in favor of any insurer with respect to any such claim.

(g) **Waiver of Claims and Subrogation**. The Association waives all claims against the Owners for any damage to the Association Insured Property (including without limitation, any loss of use of such property), except that the Association may claim against an Owner for property damage caused by that Owner to the extent that either (i) the peril causing such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or the property insurance actually maintained by the Association (whichever is greater), provided that such Owner's liability for such uninsured damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration; (ii) the peril causing such damage is covered by the Association's property insurance, but the damage is within the amount of the deductible or self-insured retention, provided that such Owner's liability for such damage is limited to the amount of liability insurance required to be maintained by such Owner pursuant to this Declaration, or (iii) such damage is caused by the gross negligence or willful misconduct of that Owner Any property insurance policy obtained by the Association must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of the Association to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Association and the Owners as set forth herein. If an Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy a Compliance Assessment equal to the cost of repairing the damage or any insurance deductible paid under the Association's insurance policy, as applicable, and the increase, if any, in insurance premiums directly attributable to such damage. The waivers of claims and subrogation set forth in this subsection apply only in favor of the Owners and do not limit or waive, release or discharge any claims that the Association (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, or Invitee, provided that such waivers shall also apply in favor of an Owner's Occupant if and to the extent that the Owner has similarly agreed in such lease agreement to a waiver of claims and subrogation against such Occupant.

10.1.3 **General Policy Requirements**. All insurance policies the Association is required to obtain pursuant to this ARTICLE shall be placed and maintained with companies rated at least "A-/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. If an A M. Best Insurance Service rating is not available, a comparable rating service may be used. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Board. For communities approved by FNMA, the maximum deductible may not exceed the maximum deductible, if any, established by FNMA. The coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this ARTICLE.

10.1.4 **Fidelity Bond**. The Association shall maintain a commercial crime policy or a fidelity bond in an amount equal to the greater of (a) the estimated maximum amount of funds, including reserves, expected to be regularly held by or on behalf of the Association or a managing agent at any given time during the term of the fidelity bond, and (b) three

(3) months' aggregate of the Regular Assessments on all Residential Units plus any reserve funds. If the Association maintains a bond, the bond shall name the Association as obligee and if the Association maintains insurance, the policy shall name the Association as the insured and shall insure against loss by reason of the acts of the employees of the Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

10.1.5 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all Applicable Laws.

10.1.6 Directors and Officers Insurance. The Association shall maintain a policy insuring the Association's officers and directors against liability for their acts or omissions while acting in their capacity as officers and directors of the Association. The limits of such insurance shall be not less than Two Million Dollars ($2,000,000) and shall at all times meet or exceed the minimum requirements of Section 5800 of the California Civil Code.

10.1.7 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and available for inspection by Owners at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior written notice to the Association, Owners and First Mortgagees, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Association shall provide to the Owners such information regarding the insurance of the Association as may be required by Applicable Law or under the Bylaws.

10.1.8 Compliance With Federal Regulations. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements for condominium communities established by any Federal Agencies, except to the extent such coverage is not available or has been waived in writing by the applicable Federal Agency. If the FNMA and FHLMC requirements conflict, the more stringent requirements shall be met.

10.1.9 Allocation of Premiums Between Commercial and Residential Owners. The Association may provide the coverage described in this ARTICLE under one or more policies of insurance. If any components of the Association insurance for the commercial portion of the Community are priced separately from the residential portion of the Community, then the Commercial Owners shall pay for the commercial portion as a Commercial expense (**"Commercial Expense"**) and the Residential Owners shall pay for the residential portion as a residential expense (**"Residential Expense"**) If any Association insurance is issued as a single policy covering the commercial and the residential portions of the Community, the Board shall allocate the cost of such insurance between the Commercial Owners and the Residential Owners as a General Variable Expense in accordance with **Exhibit "D"**.

10.2 Owners' Insurance Obligations.

10.2.1 Property Insurance.

(a) **Residential Owner Insured Property**. Each Residential Owner shall obtain and maintain at its sole expense property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO form residential condominium homeowner's insurance policy or its equivalent containing the broadest coverage provisions typically available in such a policy, insuring (i) all fixtures and Utility Facilities solely serving the Residential Unit, (ii) ceiling, floor and wall surface materials (e.g , paint, wallpaper, mirrors, carpets and hardwood floors); (iii) any internal doors and (iv) any upgrades or Improvements installed by an Owner within the Residential Unit or Exclusive Use Easements (collectively referred to as the "**Residential Owner Insured Property**") for an amount equal to the maximum insurable replacement value thereof. Each Residential Owner is responsible to obtain at its sole cost and expense insurance for any personal property of such Residential Owner in such amounts as may be deemed adequate by such Residential Owner.

(b) **Commercial Owners**. Each Commercial Owner shall obtain and maintain or cause to be obtained and maintained at its sole expense property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO form Condominium Commercial Owners Insurance policy or its equivalent, insuring (i) all personal property of such Commercial Owner, (ii) all fixtures and Utility Facilities solely serving the Commercial Unit, (iii) ceiling, floor and wall surface materials within the Commercial Unit; (iv) all equipment used in the operation of the business by the Commercial Owner or its Occupants, (v) shelving, cabinetry and any other tenant improvements, and (vi) other Improvements constructed by such Commercial Owner or its Occupants (collectively referred to as the "**Commercial Owner Insured Property**") for an amount equal to the maximum insurable replacement value thereof. The Commercial Owner are hereby advised that if they elect to obtain loss of use or business interruption insurance, such insurance shall be obtained at the sole cost and expense of the Commercial Owner, and shall not be the responsibility of the Association.

(c) **Waiver of Claims and Subrogation**. Each Owner waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that a failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association as set forth herein. The waivers of claims and subrogation set forth in this subsection apply only in favor of the Association and do not limit or waive, release or discharge any claims that an Owner (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, other Owner, or Invitee; provided, that such waivers shall also apply in favor of the Association's managing agent if and to the extent that the Association has similarly agreed in a written management agreement to a waiver of claims and subrogation against such managing agent.

10.2.2 Liability Insurance.

(a) **Residential Owners**. Each Residential Owner shall, at such Owner's sole cost and expense, maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Residential Owner against liability arising from the ownership, operation, maintenance and use of the Residential Condominium by such Residential Owner. Such policies of insurance shall be written in companies reasonably satisfactory to the Association and may be part of a Residential Owner's insurance policy. Liability insurance maintained by Residential Owners shall have limits of liability of not less than

Five Hundred Thousand Dollars ($500,000 00) per occurrence and Five Hundred Thousand Dollars ($500,000.00) general aggregate

(b) **Commercial Owners**. Each Commercial Owner shall, at such Owner's sole cost and expense, maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Commercial Owner against liability arising from the ownership, operation, maintenance and use of its Condominium. Such policies of insurance shall be written in companies reasonably satisfactory to the Association. Liability insurance maintained by the Commercial Owner shall have limits of liability equal to or greater than the liability insurance customarily carried by Owners of commercial space which are comparable in size, location and quality to the Community, but not less than One Million Dollars ($1,000,000.00) per occurrence and One Million Dollars ($1,000,000 00) general aggregate for non-restaurant uses and not less than Two Million Dollars ($2,000,000.00) per occurrence and Two Million Dollars ($2,000,000 00) general aggregate for restaurant uses.

10.2.3 Provisions Applicable to Owners' Insurance Requirements.

(a) **Copies of Policies** The Association shall have the right but not the obligation to request copies of any insurance policy or a certificate of such insurance which an Owner is required to maintain pursuant to this Declaration, and in such case the Owner, shall deliver a copy to the Association within fifteen (15) days. If such provision or endorsement is available from the insurer, all policies shall indicate they may not be canceled or modified without thirty (30) days prior written notice to the Association, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. The acceptance of a copy of an insurance policy by the Association from an Owner shall not constitute a waiver of any of the insurance requirements set forth herein.

(b) **General Policy Requirements**. All insurance policies the Owners are required to obtain pursuant to this ARTICLE shall be placed and maintained with companies rated at least "B/VII" by A M. Best Insurance Service and otherwise reasonably satisfactory to the Association The coverage types and amounts required for such insurance may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this ARTICLE, including without limitation condominium unit owners' policy forms that provide both property damage and liability insurance coverage under one policy.

10.3 Review of Insurance. The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year. The review shall include a reasonable determination of the replacement cost of all Association Insured Property without respect to depreciation.

10.4 Board's Authority to Revise Insurance Requirements Subject to any statutory insurance requirements, the Board shall have the power and right to adjust and modify the insurance requirements for Owners and the Association set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent owners and associations of communities similar in construction, location and use. If the Board elects to materially reduce the coverage required to be maintained by the Association from the coverage required in this ARTICLE, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction The Association, and its directors and officers, and the

Owners shall have no liability to each other or to any Mortgagee and shall not be in breach of their obligations hereunder, if after a good faith effort, to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or in the case of insurance required to be maintained by the Association, if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

ARTICLE 11
DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

11.1 Restoration Defined. As used in this **ARTICLE 11**, the term "restore" or "restoration" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

11.2 Restoration Proceeds for Association Property.

11.2.1 Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to restore the damaged Improvements, and if such claims are not waived, the Association shall determine whether to levy a Compliance Assessment against any Owner or Owners who caused such damage in accordance with **Section 10.1.2(g)**. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

11.2.2 Insufficient Proceeds. If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment pursuant to **subsection (a)** below, and second to use a plan of alternative reconstruction pursuant to **subsection (b)** below.

(a) **Additional Special Assessment.** If the total funds available to restore the damaged Improvement as provided in **Section 11.2.1** are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency ("**Additional Special Assessment**"). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 11.2.1**, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **subsection (b).**

(b) **Alternative Reconstruction.** The Board shall consider and propose plans to reconstruct the damaged Improvements making use of whatever funds are available to it pursuant to **Section 11.2.1** and **subsection (a)** above ("**Alternative Reconstruction**"). All proposals shall be presented to the Owners. If two-thirds of the Voting Power of the Owners whose Residential Units were materially damaged, as determined by the Association ("**Affected Owners**") and a majority of the Voting Power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvements in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **subsection (c)** shall apply

(c) **Sale of Building.** If the damaged Improvement is part of the Condominium Building ("**Damaged Building**"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of **Subsections (a)** and **(b)**, the Board, as the attorney-in-fact for each Owner of a Condominium, shall be empowered to sell the Damaged Building, including all Condominiums therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area, or (iii) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of this Declaration.

(d) **Distribution of Proceeds.** The proceeds from the sale, together with the insurance proceeds received and any reserve funds, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners and their respective Mortgagees, in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

11.3 Rebuilding Contract. The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible date. Such restoration shall be commenced no later than one hundred eighty (180) days after the event requiring restoration and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

11.4 Authority to Effect Changes If any adjacent Units or portion thereof are damaged or destroyed or in need of renovation or rehabilitation and the Units are repaired or reconstructed pursuant to the provisions set forth herein, the Unit may be repaired or reconstructed in a manner that alters the boundaries of such Units or the adjacent Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board, by the holders of any First Mortgages to the extent required herein and the Owners of the affected Units;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the affected Units;

(iii) the alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than 10% from the square footage as shown on the Condominium Plan;

(iv) the Board has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and Occupants to use and enjoy the Association Property;

(v) the Condominium Plan is amended to reflect the alteration to the Units or Association Property; and

(vi) easements for any encroachments created by such alterations are granted to the affected Owners by the Association.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Association Property as authorized above, including, without limitation, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

11.5 **Minor Repair and Reconstruction**. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars ($10,000.00). The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable and determine whether to levy a Compliance Assessment against any Owner who caused the damage pursuant to **Section 10.1.2(g)**, such Assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

11.6 **Damage or Destruction to a Unit** In the event of damage or destruction to any Unit, the Owner thereof shall (unless the Association is not required to repair surrounding damaged Association Property pursuant to the terms set forth above) reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved. The Owner shall be entitled to the benefit of any master policy of property insurance maintained by the Association to the extent it covers the damage or destruction of elements of the Condominium that are within the Unit and which are the obligation of the Owner to repair as provided in this Declaration. With the exception of any casualty or damage insured against by the Association pursuant to **Section 10.1**, restoration and repair of any damage to the interior of any individual Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner, provided however, that nothing contained in this Section shall be construed as a waiver of claims that the Owner of a damaged Unit may have against another Owner who caused the damage. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this ARTICLE such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with Plans and Specifications approved in accordance with **ARTICLE 8.**

11.7 **<u>Condemnation of Association Property</u>**. If any portion of the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above, provided, however, that should it be determined to repair or rebuild any portion of the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this ARTICLE for repairing damaged or destroyed portions of the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this ARTICLE for determining whether to rebuild or repair following damage or destruction.

11.8 **<u>Condemnation of a Unit</u>**. In the event of any taking of a Unit, the Owner (and such Owner's Mortgagees as their interests may appear) of the Unit shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Unit and membership in the Association if such Owner shall vacate such Owner's Unit as a result of such taking. In such event said Owner shall grant its remaining interest in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

ARTICLE 12
PARTITION AND SEVERABILITY OF INTERESTS

12.1 **<u>Suspension</u>**. The right of partition is suspended pursuant to California Civil Code Section 4610 as to the Community. Nothing in this ARTICLE shall be deemed to prohibit partition of a co-tenancy in a Condominium.

12.2 **<u>Partition</u>** Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Community, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium seek any such judicial partition The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. Notwithstanding the foregoing, judicial partition shall be permitted as follows

12.2.1 With the approval, after substantial destruction or condemnation of the Community occurs, of at least sixty-seven percent (67%) of the total Voting Power and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

12.2.2 With the approval, for reasons other than substantial destruction or condemnation of the Community, of at least sixty-seven percent (67%) of the total Voting Power and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

12.2.3 As allowed by California law, including Civil Code Section 4610, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within sixty (60) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested. For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Eligible Holder" in this **Section 12.2** shall be deemed to include all First Mortgagees.

12.3 Distribution of Proceeds Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Condominiums at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

12.4 Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Community, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Community may be had under California Civil Code Section 4610 The power of attorney shall.

12.4.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

12.4.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of at least seventy-five percent (75%) of the Owners and at least seventy-five percent (75%) of all Institutional Mortgagees, and

12.4.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith

12.5 Prohibition Against Severance. An Owner shall not be entitled to sever such Owner's Unit from its membership in the Association, and shall not be entitled to sever such Owner's Unit and such Owner's membership from such Owner's undivided interest in the Common Area for any purpose None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Unit over the Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358 Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in **Section 12.2** in which the right to partition the Community is suspended thereunder.

12.6 Conveyances. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, co-tenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE 13
RIGHTS OF MORTGAGEES

13.1 Conflict. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this ARTICLE shall control with respect to the rights and obligations of Mortgagees as specified herein.

13.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

13.3 Payment of Taxes and Insurance. All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual Condominium and not the Community as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Association Property or Improvements situated thereon and may pay overdue premiums on property insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

13.4 Notice to Eligible Holders. An Eligible Holder is entitled to timely written notice of the following events:

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

13.4.2 Any delinquency in the payment of Assessments or charges owed by the Owner that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date, 13.4.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

13.4.4 Any proposal to take any action specified in this ARTICLE or in the ARTICLE hereof entitled "Destruction of Improvements and Condemnation;"

13.4.5 Any default by the Owner-Mortgagor of a Condominium that is subject to a First Mortgage held by an Eligible Holder in the performance of its obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

13.4.6 Any proposed action that requires the consent of a specified percentage of the Mortgagees.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to **"Eligible Holder"** in this **Section 13.4** shall be deemed to include all First Mortgagees and all guarantors of First Mortgages.

13.5 Reserve Fund. The Association shall maintain a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Association Property. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of Assessment or charge authorized by this Declaration.

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

13.7 Financial Statements. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Association's Fiscal Year-end to any Institutional Mortgagee/Eligible Holder that has submitted a written request for it.

13.8 Actions Requiring Eligible Holder Approval. Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

13.8.1 By act or omission, seek to abandon or terminate the Community;

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

13.8.3 By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Units, the exterior maintenance of Units, or the upkeep of lawns, plantings or other landscaping in the Community,

13.8.4 By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

13.8.5 Partition or subdivide a Condominium;

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

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

13.9 __Votes for Termination of Community__ Any election to terminate the legal status of the Community as a condominium community shall require:

13.9.1 The approval of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the total Voting Power if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Community, or

13.9.2 The approval of at least sixty-seven percent (67%) of the total Voting Power of the Association and Eligible Holders that represent at least sixty-seven percent (67%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders, if Section 13.9.1 is not applicable.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to **"Eligible Holder"** in this **Section 13.9** shall be deemed to include all First Mortgagees

13.10 __Condemnation or Destruction__. In the event a portion of the Community is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Community unless Eligible Holders representing at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages held by Eligible Holders approve the taking of other action by the Association.

13.11 __Self-Management__. The vote or approval by written ballot of at least sixty-seven percent (67%) of the total Voting Power and Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders shall be required to assume self-management of the Community if professional management has been required by an Eligible Holder at any time

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

13.13 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Association Property Any provision to the contrary in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

13.14 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue

13.15 Foreclosure. If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for Assessments, including Additional Charges, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments, including Additional Charges, that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued Assessments or other charges may include previously unpaid Assessments provided all Owners, including the foreclosure-purchaser, and its successors and assigns are required to pay their proportionate share as provided in this Section.

13.16 Non-Curable Breach. Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

13.17 Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this ARTICLE.

13.18 Appearance at Meetings. Because of its financial interest in the Community, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

13.19 Right to Furnish Information Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

13.20 Right of First Refusal Not Applicable to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's

Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

13.21 Written Notification to Mortgagees or Guarantors of First Mortgages. If a Mortgagee or guarantor of a First Mortgage has not given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the First Mortgage, any written notice or proposal required or permitted by this Declaration to be given to such Mortgagee or guarantor shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee or guarantor at its address appearing of record in the First Mortgage (or assignment thereof, if applicable).

ARTICLE 14
AMENDMENTS

Except as otherwise set forth in this Declaration, this ARTICLE shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Community without (i) the prior written consent of Declarant and (ii) the recording of said written consent in the Official Records

14.1 Amendment Before the Close of First Sale Before the conveyance of the first Condominium to a First Purchaser, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

14.2 Amendments After the Close of First Sale. After the conveyance of the first Condominium to an Owner under a Public Report and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of a majority of the Voting Power of each class of Members has been obtained. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of (a) at least a majority of the total Voting Power and (b) at least a majority of the Voting Power, other than Declarant, has been obtained. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 5100 and the rules adopted by the Board pursuant thereto Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or

Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording with the Office of the County Recorder.

14.3 **Approval of Material Amendments**. In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the Voting Power of each class of Members (or, after conversion of the Class B membership to Class A, at least sixty-seven percent (67%) of the total Voting Power of the Association and at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant) shall also be required For purposes of this **Section 14.3**, **"Material Amendment"** shall mean, for the purposes of this Section, any amendments to provisions of this Declaration governing any of the following subjects:

14.3.1 The fundamental purpose for which the Community was created (such as a change from residential use to a different use);

14.3.2 Assessments, collection of assessments, assessment liens and subordination thereof;

14.3.3 The reserve for repair and replacement of the Association Property;

14.3.4 Property maintenance obligations;

14.3.5 Casualty and liability, or hazard insurance or fidelity bond requirements,

14.3.6 Reconstruction in the event of damage or destruction,

14.3.7 Rights to use the Association Property;

14.3.8 Reallocation or conveyance of any interests in the Association Property,

14.3.9 Voting;

14.3.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;

14.3.11 Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community, the redefinition of Unit boundaries or the conversion of a Unit or Units into Association Property,

14.3.12 Imposition of any restriction on any Owner's right to lease, sell or transfer its Unit;

14.3.13 Merger or consolidation of the Association;

14.3.14 A determination not to require professional management if required pursuant to this Declaration; and

14.3.15 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders.

Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. For so long as is required by FNMA's legal requirements for Community acceptance, all references to **"Eligible Holder"** in this **Section 14.3** shall be deemed to include all First Mortgagees. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records.

14.4 Additional Approvals.

14.4.1 Governmental Approvals. If the consent or approval of any Governmental Agency, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

14.4.2 Amendment of Certain Provisions. Notwithstanding anything to the contrary contained in this Declaration, **Sections 1.60, 1.61, 3.3.15, 3.4.6, 3.4.16, 7.3, 7.5, 15.3** and **15.5** of this Declaration shall not be amended without the vote or approval by written ballot of (a) at least ninety percent (90%) of the Voting Power other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

14.4.3 Amendment to Eliminate Easements. So long as Declarant owns any portion of the Property, this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect.

14.5 Conflict with ARTICLE 13 or Other Provisions of this Declaration. To the extent any provisions of this ARTICLE conflict with the provisions of **ARTICLE 13** or any other provision of this Declaration except those contained in **Section 14.2**, the provisions of **ARTICLE 13** or the other provisions shall control.

14.6 Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent such section is applicable.

14.7 Reliance on Amendments. Any amendment made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith

ARTICLE 15
ENFORCEMENT

15.1 **Term**. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by at least sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

15.2 **Enforcement and Nonwaiver**.

15.2.1 **Rights of Enforcement of Governing Documents**. The Association, or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to enforce provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.2.2 **Procedure for Enforcement**. Notwithstanding anything to the contrary set forth in **Section 15.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000, *et seq.* relating to such enforcement action

15.3 **Notice of Actions Against Declarant** Subject to the provisions of **Section 15.5** hereof, the Association shall comply with the provisions of Civil Code Section 6150 prior to the filing of any civil action by the Association against the Declarant or other developer of the Community for either alleged damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Community that arises out of, or is integrally related to, such damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 6150 of the California Civil Code.

15.4 **Notification to Prospective Buyers**. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice produced by the Association and delivered to the Owners in accordance with Section 6000 of the California Civil Code and this Declaration.

15.5 Alternative Dispute Resolution. The purpose of this **Section 15.5** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between (i) Owner and/or the Association and (ii) Declarant after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property and/or the Fit and Finish Warranty that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "**Dispute**" and collectively as "**Disputes**"). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the procedures set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, AGREE TO BE BOUND BY THE PROVISIONS OF THIS **SECTION 15.5**.

15.5.1 Claim Notice; Right to Inspect and Correct. For any Dispute arising under the Right to Repair Act, the Declarant adopts the non-adversarial procedures as set forth in Civil Code Section 912, *et seq.* ("**Statutory Non-Adversarial Procedures**"). For any Dispute to which the Right to Repair Act does not apply for any reason, including without limitation that the Owner elects not to proceed under the Right to Repair Act, the Owner shall notify the party or parties against whom the claims was made of its election to proceed under either (a) or (b) below·

(a) the Statutory Non-Adversarial Procedures or

(b) the following procedures: (i) provide written notice to the party or parties against whom a claim is made of the Dispute, identifying the claimant's name and address; (ii) state that the claimant elects to commence the procedures set forth in this **Section 15.5.1**; and (iii) describe the nature and location of the Dispute in reasonable detail (the "**Dispute Notice**"); (iv) within a reasonable period of time after receipt of the Dispute Notice, but not to exceed sixty (60) days, the party or parties receiving the Dispute Notice and the claimant shall meet and confer at a mutually-acceptable place in the County to discuss the Dispute; (v) at such meeting or at such other mutually-agreeable time, the parties and their authorized representatives shall have full access to the property that is subject of the Dispute for the purposes of inspecting such property; (vi) if the party or parties against whom the Dispute is made decide to take any corrective action, that party or parties and their representatives shall be provided full access to the subject property to take such corrective action, provided that the corrective action is taken within forty-five (45) days after the inspection of the property referenced above.

15.5.2 Mediation. If the parties cannot resolve the Dispute pursuant to the procedures described in **Section 15.5.1** above, subject to the provisions of **Section 15.5.3(h)** below, and except for actions in small claims court or Disputes that have already been mediated, each Owner, the Association and Declarant agree to submit any and all disputes to non-binding mediation pursuant to the mediation procedures adopted by Judicial Arbitration and Mediation Services ("**JAMS**") or any successor entity thereto or to any other entity offering mediation services that is acceptable to the parties, before commencing arbitration. The cost of mediation shall be paid by the Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation

(a) The mediation shall be subject to the provisions of California Evidence Code Sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the provisions of Evidence Code Section 1118.

(b) No persons may attend the mediation other than the parties, their representatives (including, but not limited to, counsel) and the mediator other than with the permission of the parties and the consent of the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be considered confidential There shall be no stenographic record of the mediation session.

15.5.3 **Arbitration**.

(a) **Agreement to Arbitrate**. The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the County in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) **Waiver of Trial by Judge or Jury**. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All Disputes shall instead be decided by the arbitrator or by the appeal arbitrator(s), if applicable.

(c) **Rules Applicable to All Cases**. The arbitration will be conducted by JAMS in accordance with the rules of JAMS in effect as of the initiation of the arbitration ("**JAMS Rules**"), as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) **Qualifications of Arbitrators**. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(e) **Appointment of Arbitrator** The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) **Expenses**. All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If the Declarant is the prevailing party in the arbitration, the arbitrator may, in its discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse the Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant

(g) **Venue** The venue of the arbitration shall be in the County where the Community is located unless the parties agree in writing to another location

(h) **Preliminary Procedures**. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 5985, 6000 and 6100.

(i) **Participation by Other Parties**. The Association, an Owner and Declarant, to the 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

(j) **Rules of Law**. The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(k) **Attorneys' Fees and Costs**. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

15.5.4 **Additional Rules Applicable to Certain Cases**. In any arbitration in which a claim of Owner, the Association or Declarant exceeds $250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) **Qualifications of Arbitrator**. In addition to the requirements of **Section 15.5.3(d)** above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) **Rules of Law**. The California Evidence Code shall apply.

(c) **Written Decision**. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision If any party to the arbitration requests it, the arbitrator must issue a reasoned award.

(d) **Additional Discovery Rights**: In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(i) **Inspection, Examination and/or Test**. The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(ii) **Deposition of Opposing Party**. The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(iii) **Deposition of Expert Witnesses**. The right to take the deposition of each expert witness designated by an opposing party for up to 4 hours

(iv) **Additional Depositions**. The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause

15.5.5 **Procedure for Appeal of Certain Cases**. In any arbitration in which a claim or arbitration award of Owner or Declarant exceeds $250,000 in value, Owner and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) **Right of Appeal** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) **Appellate Panel**. An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) **Issues on Appeal**. The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount

(d) **Expenses and Costs on Appeal**. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in **Section 15.5.5(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator The appeal arbitrators may, within thirty (30) days of their determination, award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in its or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal.

(e) **New Evidence**. The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

15.5.6 **Federal Arbitration Act**. Because many of the materials and products incorporated into the Community 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 of this Declaration.

15.5.7 <u>NOTICE AND ACKNOWLEDGMENT</u>. THIS SECTION 15.5 SETS FORTH A COMPREHENSIVE ARBITRATION AGREEMENT THAT IS BINDING ON DECLARANT, EACH OWNER AND THE ASSOCIATION. ANY PARTY TO A DISPUTE (AS BROADLY DEFINED IN SECTION 15.5 AND THIS SECTION 15.5.7) MAY FORCE OTHER PARTIES TO ARBITRATE THAT DISPUTE. THE FEDERAL ARBITRATION ACT PROVIDES THE LAW OF ENFORCEMENT. BY AGREEING TO ARBITRATION, DECLARANT, EACH OWNER, AND THE ASSOCIATION GIVE UP ANY RIGHTS DECLARANT, OR AN OWNER, OR THE ASSOCIATION MAY POSSESS TO HAVE THE DISPUTE RESOLVED IN COURT. IN ARBITRATION, RIGHTS TO DISCOVERY MAY BE MORE LIMITED THAN IN A COURT CASE. THE DISPUTE WILL BE DECIDED BY A NEUTRAL ARBITRATOR AS PROVIDED IN THIS DECLARATION. THE ARBITRATOR IS A PRIVATE CITIZEN, NOT A PUBLIC OFFICIAL. THERE IS NO JURY. BY AGREEING TO ARBITRATION, AN INVOLVED PARTY IS GIVING UP THE RIGHT TO JURY TRIAL. THE GROUNDS FOR A COURT TO REVIEW AN ARBITRATOR'S DECISION ARE LIMITED BY LAW. THEY ARE MUCH MORE LIMITED THAN AN APPEAL OF A DECISION BY A JUDGE OR JURY.

15.5.8 **<u>Final and Binding Award</u>**. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

15.5.9 **<u>Severability</u>**. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this **Section 15.5** is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this **Section 15.5** shall be conducted under the remaining enforceable terms of this **Section 15.5.**

15.5.10 **<u>Application of Award</u>**. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of **Section 3.4.16**

15.5.11 **<u>Statutes of Limitation</u>**. Nothing in this **Section 15.5** shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section.

ARTICLE 16
<u>GENERAL PROVISIONS</u>

16.1 **<u>Headings</u>**. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions In the event that any phrase, clause, sentence, paragraph, section, ARTICLE or other portion of this Declaration shall become illegal, null, void, against public policy or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

16.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

16.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

16.5 No Racial Restriction. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of its Condominium on the basis of race, sex, color or creed.

16.6 Access to Books. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

16.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

16.8 Notification of Sale of Condominium Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to its transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified Notices shall also be deemed received on the next business day after being sent by overnight courier or upon delivery if delivered personally to any Occupant over the age of twelve (12) years.

16.9 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires

16.10 Exhibits All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

16.11 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

16.12 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

16.13 Statutory References. All references in this Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and any successor laws as may be amended from time to time.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

388 FULTON STREET OWNER LLC,
a Delaware limited liability company

By: 388 Fulton Street Partners LLC,
a Delaware limited liability company,
Manager

By: 7X7 Development LLC,
a California limited liability company,
Manager

By: ____________________
Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA)
) ss
COUNTY OF San Francisco)

On June 2, 2016 before me, Y Barrueta-Digesti, Notary Public, personally appeared Brian Saliman 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 Y Barrueta-Digesti (Seal)

Y BARRUETA-DIGESTI
Commission # 2072042
Notary Public - California
San Francisco County
My Comm Expires Jul 18, 2018

SUBORDINATION AGREEMENT

The undersigned (**"Beneficiary"**) holds the beneficial interest in that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (**"Deed of Trust"**) dated as of July 31, 2014 recorded in the Office of the County Recorder of San Francisco County on August 12, 2014 as Instrument No. 2014-J926214-00, which Deed of Trust encumbers all or a portion of the real property covered by the Declaration of Covenants, Conditions and Restrictions of 388 Fulton (**"Declaration"**). Beneficiary now subordinates the Deed of Trust and its beneficial interest thereunder to (a) the foregoing Declaration, (b) any Supplementary Declaration which is recorded pursuant to the Declaration (c) any amendment or restatement of the Declaration or any Supplementary Declaration and (d) all easements to be conveyed to the Association in accordance with any Supplementary Declaration.

Dated: 6/2/16

Beneficiary:

FAR EAST NATIONAL BANK, a national banking association

By: [signature]
Name: Thomas Chow
Title: First Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss
COUNTY OF San Francisco)

On June 2, 2016 before me, Y Barrueta Digesti, Notary Public, personally appeared Thomas Chow 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 Barrueta Digesti (Seal)

Y BARRUETA-DIGESTI
Commission # 2072042
Notary Public - California
San Francisco County
My Comm Expires Jul 18, 2018

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PROPERTY:

THAT CERTAIN REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO SHOWN ON "FINAL MAP 8270, A 5 COMMERCIAL UNIT AND 69 RESIDENTIAL UNIT MIXED-USE CONDOMINIUM PROJECT" RECORDED ON MAY 27TH, 2016 IN BOOK 129 OF CONDOMINIUM MAPS AT PAGES 145 THROUGH 149, OFFICIAL RECORDS OF CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA ("**MAP**")

ASSOCIATION PROPERTY:

THAT CERTAIN REAL PROPERTY AND RELATED IMPROVEMENTS IN THE CITY AND COUNTY OF SAN FRANCISCO, DESIGNATED AS SUCH ON THE CONDOMINIUM PLAN FOR 388 FULTON, RECORDED ON June 6, 2016 AS DOCUMENT NO. K270008, IN THE OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXHIBIT "B"

PARKING EASEMENT

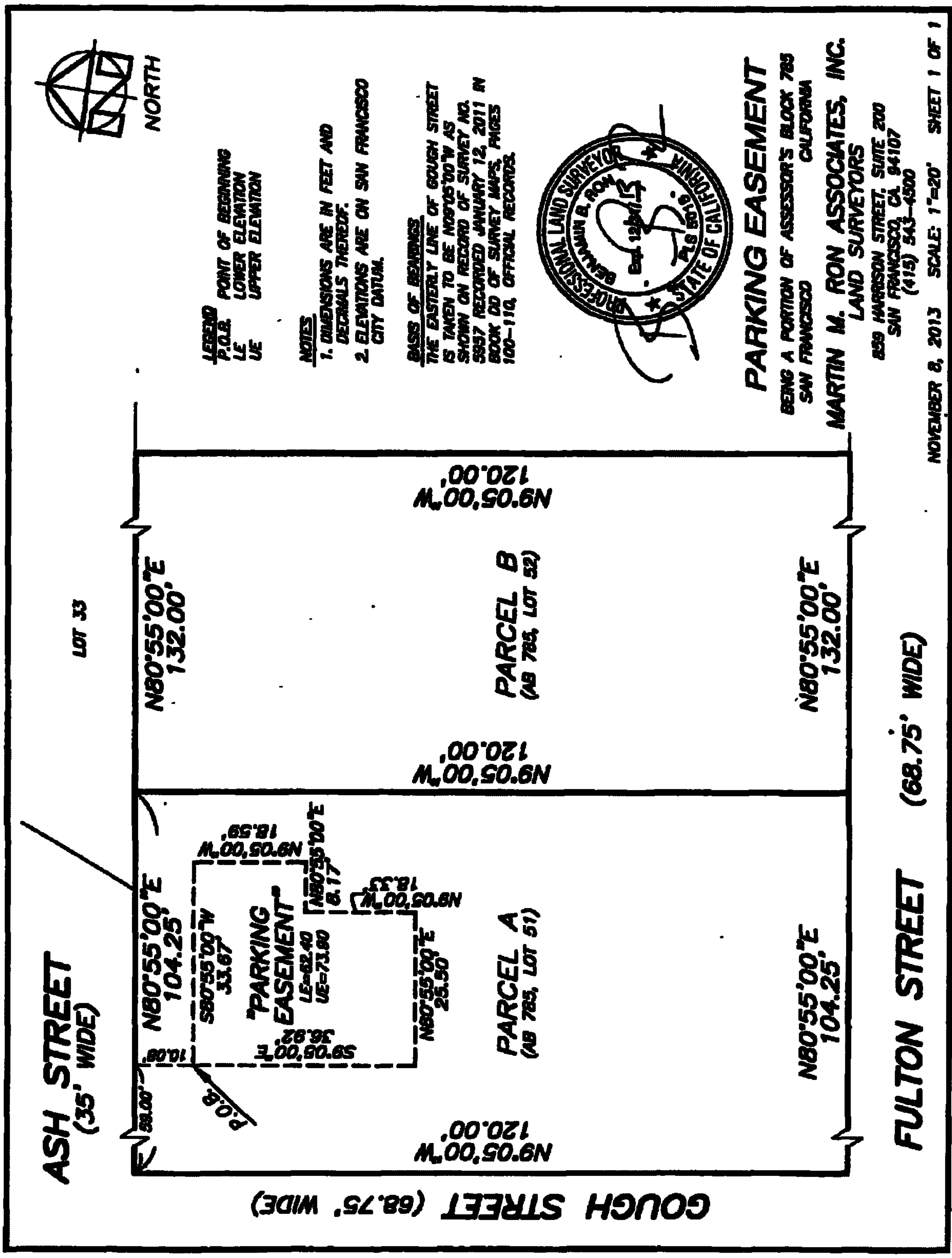

EXHIBIT "C"

MAINTENANCE RESPONSIBILITY CHART

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
Residential Units and Residential Owners – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit including, without limitation, all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit whether free-standing or built in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit, or the Association Property	N/A	O	O	O	N/A	N/A	N/A

"CO" indicates an obligation of the Commercial Owner
"A" indicates an obligation of the Association
"N/A" indicates an obligation that is "not applicable"
"O" indicates an obligation of an Owner

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
Residential Units and Residential Owners – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Windows enclosing a Residential Unit, including metal frames, tracks and exterior screens of glass doors and windows	A	O	O	O	N/A	N/A	N/A
Doors enclosing an Owner's Residential Unit	O (interior) A (exterior)	A	A	A	O to paint interior A to paint exterior	N/A	N/A
The Exclusive Use Deck Areas (excluding any Improvements located within such areas and excluding any walls, railing and fencing surrounding such areas)	O	O	A	A	A	A	N/A
Exterior fixtures including light fixtures, photocells, and light bulbs not servicing an Exclusive Use Deck Area	A	A	A	A	A	N/A	N/A

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Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
Residential Units and Residential Owners – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Exterior fixtures including light fixtures, photocells and light bulbs servicing an Exclusive Use Deck Area	O	O	O	O	O	N/A	N/A
The individual lock for the Residential Unit's applicable mailbox (subject to Postal requirements)	O	O	O	O	N/A	N/A	N/A
Established system of drainage within the Owner's Exclusive Use Deck Areas	O	A	A	A	N/A	N/A	N/A
All Utility Facilities serving two or more Condominiums, and all private Utility Facilities	N/A	A	A	A	N/A	N/A	N/A
Cluster Mailboxes (excluding locks on individual mailboxes)	A	A	A	A	A	N/A	N/A

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Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
Residential Units and Residential Owners – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Walls, railings and fencing on Association Property and walls, railings and fencing surrounding the Exclusive Use Deck Areas	A	A	A	A	A	N/A	N/A

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"O" indicates an obligation of an Owner

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
Association Property – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
All Association Property including without limitation, roof, structural components, bearing walls, foundations, except for any Exclusive Use Areas as provided herein	A	A	A	A	A	A	A
Association Property such as landscaping, open spaces situated within the Association Property, Pollution Control Devices except for any Exclusive Use Areas as provided herein	A	A	A	A	A	A	A

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"A" indicates an obligation of the Association
"N/A" indicates an obligation that is "not applicable"
"O" indicates an obligation of an Owner

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.							
Commercial Unit and Commercial Owner – Allocation of Maintenance Responsibilities							
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Commercial Unit including, without limitation, all cabinets, plumbing fixtures, tenant improvements and all other items within the Commercial Unit, whether free-standing or built in	CO	CO	CO	CO	CO	CO (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Commercial Unit	N/A	CO	CO	CO	N/A	N/A	N/A
Exterior surface of plate glass and windows bordering any Commercial Unit	A[1]	CO	CO	CO	N/A	N/A	N/A
Doors enclosing the Commercial Units and all locks, hinges and any other mechanical elements of the exterior doors to the Commercial Units	CO	CO	CO	CO	CO	N/A	N/A

[1] Commercial windows will be cleaned on same schedule as windows bordering Residential Units. Any more frequent window cleaning will be the responsibility of the Commercial Owner.

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"O" indicates an obligation of an Owner

EXHIBIT "D"

Allocation of Variable Expense

Unit Number	Assessment Group	Number of Units	% of Variable Expense Residential Assessment	% of Variable Expense General Assessment
OA	1	30	0.98%	0 8967%
OB	2	5	1.24%	1.1443%
1A	2	5	1.24%	1.1443%
1B	3	1	1.56%	1.4390%
2A	4	5	2 03%	1.8633%
2B	4	3	2.03%	1.8633%
2C	4	5	2.03%	1.8633%
2D	4	5	2.03%	1 8633%
2E	4	8	2.03%	1.8633%
2E1	4	1	2 03%	1.8633%
2E2	4	1	2.03%	1.8633%
Commercial Area 1	5	1		3.1200%
Commercial Area 2	5	1		4.9246%
			100.0000%	100.0000%

EXHIBIT "E"

Commercial Share

Commercial Unit	***Total Assessment Commercial Area***	***Divided By***	***Number of Grids***	***Equals***	***Assessment Allocation Per Grid***
Commercial Area	$ xxx.xx	/	-	=	$ xx.xx

Commercial Share	=	Assessment Allocation Per Grid	X	Number of Grids

Note:

Commercial Area Assessment:
Commercial Area 1:
General Base Assessment + 3.385% of General Total Variable Expense = Assessment
Commercial Area 2:
General Base Assessment + 4.919% of General Total Variable Expense = Assessment

EXHIBIT "F"

Commercial Trash Area