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**BAY STREET CONDOMINIUMS
(COMMONLY KNOWN AS "BAY STREET ONE")
ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

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

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

Notice of Airport in Vicinity: This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. An "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

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**BAY STREET CONDOMINIUMS
(COMMONLY KNOWN AS "BAY STREET ONE")
ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

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

A. Location of Property. Declarant is the owner of a certain real property (the "Property") located in the City of Emeryville ("City"), County of Alameda ("County"), State of California, more particularly described as Lots 8 and 10 of Tract 7661 on that certain Map filed for record in the Office of the Recorder of Alameda County, California, on September 25, 2002, in Book 267 of Maps, pages 1-20, file number 2002-429896. The Property is one component of a mixed use, retail/residential complex known as "Bay Street Emeryville", a portion of which is governed by the Master Declaration (defined herein). In the Master Declaration, the Property is referred to as the "West Residential Parcels." With respect to the Property, this Declaration is intended to be consistent with and supplement the Master Declaration.

B. Intention. Declarant intends to improve said real property by constructing Condominiums thereon consisting of separate interests in Units and undivided interests in portions of the remaining property. Declarant intends to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the properties as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

C. Owner's Interest. The development shall be referred to as the "Project" as defined in section 1.43 herein. The Project is expected to be developed in two (2) phases, as provided in section 1.42 and Exhibit "B."

D. Undivided Interest Common Area: The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Undivided Interest Common Area. Each Condominium shall have appurtenant to it a membership in the BAY STREET ONE CONDOMINIUM ASSOCIATION, a nonprofit mutual benefit corporation, which shall own the Association Common Area.

E. Mutually Beneficial Restrictions; Phases. Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners of Condominiums. Phase I of this Project will be subject to this Declaration upon its recordation. Each subsequent Phase will be subject to this Declaration upon the recording of a Declaration of Annexation applicable to each such Phase upon annexation by Declarant as provided in section 2.6.

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

ARTICLE I DEFINITIONS AND INTERPRETATIONS

A. Definitions:

1.1 "Annexation": The process whereby Annexation Property is added to the Project as additional Phases pursuant to the provisions of section 2.6.

1.2 "Annexation Property": The real property described in Exhibit "B" attached to this Declaration which may be annexed to and become a part of the Project pursuant to section 2.6A of this Declaration.

1.3 "Architectural Control Committee or Committee": Architectural Control Committee created pursuant to section 7.9.

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

1.5 "Assessment": The cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Reimbursement Charges.

1.6 "Assessment Lien": Defined in section 4.9D.

1.7 "Association": The BAY STREET ONE CONDOMINIUM ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

1.8 "Association Common Area": All of Lot 8 as described on the Map, and any subsequently annexed Association Common Area parcels, and all improvements thereon. The Condominium Buildings are included in the Association Common Area. The Association Common Area includes, without limitation: Residential Parking Facilities; outside perimeter walls, decks, balconies, bearing walls, columns, girders, ceiling joists, sub-floors, unfinished floors, roofs, and foundation; central hot water heaters, smoke and heat detectors (including those located within the Units), fire sprinklers and extinguishers; elevators and shafts, reservoirs, tanks, pumps, motors, ducts, and chutes; conduits, elements or structures containing Utility Facilities which structures protrude into a Unit air space, pipes, plumbing, wires, utility meters and other utility installations (except the outlets thereof when located within the Unit, and except as provided in section 2.2A), required to provide power, light, telephone, gas, water, sewerage, and drainage; exterior sprinklers and sprinkler pipes. The Undivided Interest Common Area and the Units are not included in the Association Common Area.

- 1.9** "Board" or "Board of Directors": The governing body of the Association.
- 1.10** "Building" or "Condominium Building": A residential structure containing Units, identified as "Building" (followed by a letter) on the Condominium Plan.
- 1.11** "Budget": A written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.
- 1.12** "Bylaws": The bylaws of the Association, as amended from time to time.
- 1.13** "Common Area(s)": The Association Common Area and the Undivided Interest Common Area.
- 1.14** "Common Expenses": Those expenses for which the Association is responsible under this Declaration, including, but not limited to, the following: (a) actual and estimated costs of maintaining, managing and operating the Project; (b) unpaid Special Assessments, and amounts the Board determines are necessary to maintain the Reserve Fund at adequate levels; (c) the costs of all utilities for the Common Area, or that are metered to more than one Condominium, and any other utilities or services (such as trash removal) that are billed to the Association for the benefit of the Project; (d) the cost of managing and administering the Association, including compensation for managers, accountants, attorneys, and employees; (e) maintenance required by this Declaration and all other expenses incurred by the Association for the common benefit of the Owners, including the cost of Building maintenance, janitorial services, elevator maintenance and other maintenance services that benefit the Project; (f) premiums for all insurance covering the Project or the Association's fair share of the premiums for such coverages (if any) required to be paid by the Master Declaration, and insurance policies for the directors, officers and agents of the Association, and bonding the Members of the Board; (g) taxes paid by the Association; (h) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project; and (c) any other costs or expenses for which the Association may become liable under the Master Declaration.
- 1.15** "Common Interest": The proportionate undivided interest in the Undivided Interest Common Area that is a part of each Condominium as set forth in this Declaration.
- 1.16** "Condominium": An estate in real property as defined in California Civil Code §§ 783 and 1351(f), consisting of an undivided interest in the Undivided Interest Common Area and a separate interest in space called a Unit.
- 1.17** "Condominium Plan": The recorded three-dimensional plan of the Condominiums built or to be built on the property in the Project which identifies the Association Common Area, the Undivided Interest Common Area, and each separate interest pursuant to California Civil Code § 1351. A copy of this Plan is attached hereto as Exhibit "A".
- 1.18** "Declarant": BAY STREET CONDOMINIUMS, LLC, a Delaware limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.
- 1.19** "Declaration": This Declaration, as amended or supplemented from time to time.
- 1.20-** "Declaration of Annexation": An instrument executed, acknowledged and recorded by Declarant that imposes covenants, conditions or restrictions or reserves easements for all or a portion of the Annexation Property in addition to the covenants, conditions, restrictions and easements established by this Declaration. A Declaration of Annexation may modify this Declaration as it applies to the real property encumbered by the Declaration of Annexation.

- 1.21 "Design Guidelines":** The rules or guidelines setting forth procedures and standards for submission of plans for Architectural Review Committee approval.
- 1.22 "DRE":** The California Department of Real Estate and any department or agency of the California state government that succeeds to the DRE's functions.
- 1.23 "Eligible Mortgages":** Mortgages held by "Eligible Mortgage Holders."
- 1.24 "Eligible Mortgage Holder":** A First Lender who has requested notice of certain matters from the Association in accordance with section 9.6C.
- 1.25 "Eligible Insurer or Guarantor":** An insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with section 9.6C.
- 1.26 "Exclusive Use Common Area":** Those portions of the Common Area set aside for exclusive use of an Owner pursuant to section 2.2D, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code section 1351(i).
- 1.27 "First Lender":** Any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Condominium.
- 1.28 "First Mortgage":** Any recorded Mortgage (made in good faith and for value) on a Condominium with first priority over other Mortgages encumbering the Condominium.
- 1.29 "Foreclosure":** The legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws.
- 1.30 "Governing Documents":** This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Condominium Plan and Rules adopted by the Board or the Association.
- 1.31 "Map":** The Map, described above in Recital paragraph A.
- 1.32 "Major Components":** Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in Civil Code §§ 1365 and 1365.5.
- 1.33 "Master Declaration":** The "Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements and Amendment of Declaration of Reciprocal Easements," recorded OCTOBER 15, 2002, Document No. 02-465643, Alameda County Official Records. The Definitions contained in the Master Declaration are incorporated by reference herein.
- 1.34 "Member":** A person entitled to membership in the Association as provided herein.
- 1.35 "Mortgage":** A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.36 "Mortgage": The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

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

1.38 "Notice of Delinquent Assessment": A notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 4.9C.

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

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

1.41 "Phase": An increment of the Project that is subject to this Declaration, including, Phase I, and any subsequent Phase or Phases added to the Project by Annexation.

1.42 "Phase I": Units 1-47 in Building C and the Common Area of Phase I shown on the Condominium Plan for Phase I (Lot 8, Building C). Phase II includes Lot 10, Building D and Units 48-95.

1.43 "Project": All of the real property in Phase I, described on the Map and Condominium Plan, and all improvements on that real property, and any subsequent Phase which may become annexed into the Project in accordance with section 2.6, and thereby which become subject to this Declaration.

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

1.45 "Regular Assessments": A Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

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

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

1.48 "Residential Parking Facility": The parking area located within a Building which is part of the Association Common Area, and is intended to be used for parking of residents and guests of residents.

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

1.50 "Rules": The rules adopted from time to time by the Board or the Association pursuant to section 5.2D.

1.51 "SB 800": The "Right to Repair Law."

1.52 "Special Assessments": A Special Assessment levied by the Association pursuant to section 4.3B.

1.53 "Undivided Interest Common Area": All of the airspace within the Project above elevation 84.87 feet and below elevation 94.87 feet, for each Phase of the Project, as described on the Map and Condominium Plan.

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

1.55 "Utility Facilities": Defined in section 6.1.

B. Interpretations:

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

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

1.58 "Priorities and Inconsistencies": If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws and Rules, or Condominium Plan, then the provisions of this Declaration shall prevail. If there are any conflicts or inconsistencies between this Declaration and a Declaration of Annexation, then the Declaration of Annexation shall control with respect to those Condominiums that are encumbered by the Declaration of Annexation.

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

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

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

2.1 Description of Project: The Project is a Condominium Project within the meaning of Civil Code § 1351(f) consisting of the land, the Condominiums and all other improvements located thereon. Phase I of the Project consists of forty-seven (47) Units and the Common Area[s] shown on the Condominium Plan for Phase I. Reference is made to the Condominium Plan for further details. Additional property may be annexed to and become part of the Project pursuant to section 2.6.

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

A. Units: Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit." Bearing walls located within the interior of a Unit are Association Common Area, not part of the Unit, except for the finished surfaces thereof. Soffits and areas above dropped ceilings and exposed beams in ceilings, and structures that protrude into Unit air space to contain Utility Facilities, are Association Common Area and shall not be part of the Unit. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation, space heaters, lighting fixtures and cabinetry, which are located entirely within the Unit they serve. Each Unit includes both the portions of the Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Association Common Area" in section 1.8, or as "Undivided Interest Common Area" in section 1.53. Each Unit is subject to such encroachments as are contained in the Building, whether the same now exist or may be later caused or created in any manner referred to in section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Building, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the

Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

B. Association Common Area: The Association Common Area shall be conveyed to the Association prior to the close of escrow of the sale of the first Condominium in the Phase in which each of said lots is located. When the Association Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Association Common Area so conveyed in favor of Declarant, and for the benefit of the remaining Phases not yet annexed, for ingress and egress, and for the construction or completion of construction of improvements included in plans approved by the City, and for construction of Buildings and the Units therein, and the utilities serving the same, which have not yet been annexed to the Project. The easement shall continue for a reasonable period of time to complete construction of said improvements.

Each Owner may use the Association Common Area in accordance with the purposes for which it is intended subject to this Declaration and the Association's Rules, without hindering the exercise of or encroaching upon the rights of any other Condominium Owners.

C. Undivided Interest Common Area: Each Condominium Owner shall have, as appurtenant to his Unit, an equal undivided interest in the Undivided Interest Common Area for the Phase of the Project in which his Unit is located. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. The interest in the Undivided Interest Common Area cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium.

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

(1) deck designated "D", followed by the number of the Unit.

(2) balcony designated "B", followed by the number of the Unit;

(3) parking space designated "P", followed by a number, some of which parking spaces are assigned to particular Units as provided in Exhibit "C", others are to be assigned to Units by deed as provided in section 2.3.

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

(1) that portion of any Common Area floor or ceiling that is pierced by interior stairs;

(2) skylight wells serving the Unit.

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

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

2.3 Parking: The Project is subject to the Master Declaration, which establishes various easements, including easements for parking of residents of the Project in the Retail Parking Facility as defined in the Master Declaration, section 2.15, and for overnight guests at rates and under terms to be established by the Project Developer, as defined in the Master Declaration. The Board shall have authority to assign exclusive rights to use parking spaces that have not been assigned previously to any Unit, including the authority to assign rights to the use of handicapped spaces to owners licensed by the State of California to use a handicapped space. Declarant may assign the exclusive easement to use a particular parking space within the Residential Parking Facility to a particular Unit, in the deed conveying title to a Unit Owner. The Board will establish terms and conditions for parking in the Residential Parking Facility.

2.4 Rights of Entry and Use: In addition to all rights of entry and use provided for in the Master Declaration, the Units and Common Area (including Exclusive Use Common Area) shall be subject to the following rights of entry and use:

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

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

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

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

E. The encroachment easements described in section 9.5.

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

G. The rights of Owners to make improvements or alterations authorized by California Civil Code § 1360(a)(2), subject to the provisions of section 7.9 to the extent applicable.

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

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

2.6 Annexation of Additional Property: Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, and after the first close of escrow of a sale of a Unit in the Annexation Property under a Public Report, the additional property shall become a portion of the Project, and be subject to this Declaration without the necessity of amending any of its individual sections.

A. Annexation Pursuant to Plan: The Annexation Property may be annexed to and become a part of the Project in Phases, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its Members, or without the assent of the Condominium Owners, on condition that:

(1) **Plan Approved:** The annexation and development of additional Phases shall be in accordance with a plan of development approved by the Department of Real Estate of the State of California.

(2) **Declaration of Annexation:** A Declaration of Annexation shall be recorded covering the applicable portion of the Annexation Property to be annexed. The Declaration of Annexation may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property, and as are not inconsistent with the scheme of this Declaration. The Declaration of Annexation shall require the payment by the Declarant to the Association, concurrently with the closing of the escrow for the first sale of a Condominium in an annexed Phase, of appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of

residential Condominiums under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Condominium in the annexed phase.

B. Annexation Pursuant to Approval: Property other than the Annexation Property may be annexed to the Project upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its Members, excluding the Declarant, and the approval of Eligible Mortgage Holders as may be required under section 9.6D. Upon such approval, the Owner of such property may file of record a Declaration of Annexation. Upon the recording of such Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association.

C. Effect of Annexation: Assessments collected from Owners may be expended by the Association without regard to the particular Phase from which such Assessments came. All Owners shall have ingress and egress to all portions of the Common Area throughout the Project, subject to the provisions of this Declaration, the Bylaws of the Association and to the Rules of the Association in effect from time to time.

D. Quality of Construction: Future improvements to the Project will be consistent with initial improvements in terms of structure type and quality of construction.

E. Right of Successor Declarant to Annex: The right of unilateral Annexation provided for in section 2.6A constitutes a covenant running with the land, and is as such enforceable by any owner of the property described in Exhibit "B", or any part thereof, including the present owner or its successor or assignee, and Declarant or any successor or assignee of Declarant who acquires the property described in Exhibit "B", or any part thereof, and who assumes the role of Declarant with respect to the annexed property as provided in section 1.18.

2.7 Right to Deannex: Notwithstanding any other provisions of this Declaration or any declaration of Annexation, notice of addition of property or amendments or supplements to this Declaration as may be hereinafter filed of record to effect an Annexation of property under this Article, the Declarant shall have the right at any time after such Annexation but before the close of escrow on the sale under the authority of a Public Report to an Owner other than the Declarant of the first Unit within the property so annexed to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument as may be acceptable for recordation) describing the property to be so deannexed and stating that such deannexation is undertaken in accordance with the terms and conditions of this section 2.7. Any such deannexation shall be effective upon the recordation of such notice or other instrument and such notice or other instrument need only be executed by the Declarant. In any case where Declarant has sold and closed escrow on the sale of a Unit under authority of a Public Report, or Declarant has exercised any Association vote with respect to the Phase, or Assessments have commenced on any portion of the Phase, or the Association has made any expenditures or incurred any obligations with respect to any portion of the Phase, Declarant's right to deannex a portion of the Project shall be valid only with the approval, by vote or written consent, of a majority of the Owners other than Declarant, and the prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code § 11018.7. Such deannexation shall not in such case relieve Declarant from the obligation to continue to pay its equitable share of the cost of maintenance and repair as required by the Master Declaration. The intent and purpose of this deannexation clause is to permit the Declarant to revise the phasing schedule which is attached as Exhibit "A" hereto, as necessary to respond to construction and sales schedules, and to meet FNMA pre-closing requirements. Any property that is deannexed under this clause, shall be included in an amended phasing schedule, and shall be subsequently re-annexed pursuant to the revised phasing schedule.

2.8 Telecommunications Easement: Subject to the provisions of the Master Declaration, Declarant reserves blanket easements (collectively "Telecommunications Easements") over the Project for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing telecommunications facilities (collectively, "Telecommunications Purposes") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns (subject to other existing agreements of instruments of Record). No one, except for Declarant and Declarant's transferees may use the Project for Telecommunications Purposes. All telecommunications facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Project does not imply transfer of any Telecommunications Easements or telecommunications facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Project by any Owner. If the exercise of any Telecommunications Easement results in damage to the Project, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Project to another Person before the last Close of Escrow in the Project, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Project.

2.9 Easements for Vehicular and Pedestrian Access: Easements are reserved and exist for vehicular and pedestrian access by Owners of Units in Phase I, and Members of the Association, their tenants and occupants, over portions of the Annexation Property (Phase II) Lot 10 of Tract 7661. The easements are for vehicular access (egress from the Residential Parking Facility through Lot 10) and for pedestrian access to stairs, an elevator, and a pedestrian bridge. The easements are described in Exhibits "D", "E" and "F", attached hereto, and are designated "Vehicular Access Easement", "Stairs and Elevator Pedestrian Access Easement", and "Pedestrian Bridge Access Easement". The easements are generally described on Exhibits "D", "E" and "F", but the actual location is the garage drive aisle, the elevator, the stairs, and the pedestrian bridge, as shown on the construction plan and as built. The easements are appurtenant to the Units in Phase I and shall continue until recordation of a Declaration of Annexation annexing Phase II to the Project in accordance with section 2.6, at which time the easements shall automatically terminate because the easement areas will become part of Association Common Area, accessible to all Owners, Members and occupants. Easements also exist in favor of and for the benefit of the Association and to its Members, including Owners and occupants of Condominiums, for ingress, egress, transporting, loading and unloading of trash and trash disposal vehicles, and for installing and operating trash containers and chutes, utility and equipment rooms and elevator shafts, and for utilities, as said easements are described in the following documents:

Series No. 2002-465643, recorded October 15, 2002; Series No. 2002-429895, recorded October 15, 2002; Series No. 2002216857, recorded May 15, 2002, and as described on the Map.

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

2.11 Master Declaration: The project is subject to the Master Declaration, which includes, without limitation, covenants, restrictions and provisions for various easements, licenses, uses, operations, maintenance, insurance, taxes; destruction and restoration, signage, and resolution of disputes. The Master Declaration also contains important information about past environmental hazards within the Project, and restrictions on use of the Property within the Project.

ARTICLE III ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

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

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

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

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

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

ARTICLE IV ASSESSMENTS AND LIENS

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

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

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

The Regular Assessments, and Special Assessments, including Reimbursement Charges as permitted under section 4.10, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien as an Assessment Lien upon the Condominium against which each such Assessment is made, the Assessment Lien to become effective upon recordation of a Notice of Delinquent Assessment. Each Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

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

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

4.3 Assessments:

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

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

B. Special Assessments: The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments.

4.4 Restrictions on Increases in Regular Assessments or Special Assessments:

A. Except as provided in section 4.4B, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of

complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or having obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

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

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

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

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

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

4.5 Division of Assessments: Both Regular Assessments and Special Assessments shall be levied equally among the Condominiums, except as provided in section 4.3B. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

4.6 - Date of Commencement of Regular Assessment; Due Dates: The Regular Assessments provided for in this Declaration shall commence as to all Condominiums in the Phase 1 on the first day of the month following the first conveyance of a Condominium to the Owner in Phase 1 under authority of a Public Report. In subsequent Phases, the Regular Assessments against all Condominiums in each Phase shall commence on the earlier to occur of (i) the first day of

the month following the closing of the first conveyance to the Owner in that Phase, or (ii) upon the occupancy of a subdivision interest in the annexed Phase.

The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The first Regular Assessment for each added Phase shall be adjusted according to the number of months remaining in the calendar year after the Annexation.

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

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

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

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

4.9 Priorities; Enforcement; Remedies: If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of Civil Code §§ 1367 and 1367.1. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

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

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

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees (not to exceed \$425.00 per Civ. Code § 1366.3(a)), any late charges, and interest, if any.

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

(4) The right to request a meeting with the Board as provided by Civil Code §1371.1(c).

Note: Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

The provisions of this section 4.9 are intended to comply with the requirements of Civil Code section 1367.1 in effect as of January 1, 2005. If these sections are amended or rescinded in any manner the provisions of this section 4.9 automatically shall be amended or rescinded in the same manner. Civil Code section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

B. Right to Request Meeting. As provided in Civil Code § 1367.1(c), an Owner may dispute the debt noticed pursuant to section 4.9A, above, submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to section 4.9A, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

C. Notice of Delinquent Assessment. After compliance with the provisions of Civil Code § 1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Condominium of the delinquent Owner prior and superior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Unit no later than ten (10) days after recordation.

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

D. Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessment, the Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

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

- (1) no right to vote shall be exercised on behalf of the Condominium;

(2) no Assessment shall be assessed or levied on the Condominium; and

(3) each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of Foreclosure.

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

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

4.10 Reimbursement Charges; Fines and Penalties: The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Unit into compliance with the provisions of the Governing Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Association's rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board. Except as hereinafter provided, Reimbursement Charges, fines and penalties for violation of this Declaration or the Rules are not "Assessments," and are not enforceable by an Assessment Lien, but are enforceable by court proceedings. After such time as Declarant no longer owns any Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Public Report, pursuant to Civil Code §1367.1(e), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of an Assessment Lien. If Civil Code section 1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §§1367.1(e).

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

4.12 Exemptions from Assessments: Any Condominium which does not include a structural improvement for human occupancy shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include:

- (1) roof replacement;
- (2) exterior maintenance;
- (3) walkway and carport lighting;

- (4) refuse disposal, if any;
- (5) cable television;
- (6) domestic water supplied to living Units, if any;
- (7) insurance on uncompleted Units.

The foregoing exemption shall be in effect until the earliest of the following events:

- (1) a notice of completion of the structural improvements has been recorded;
- (2) occupation or use of the Condominium; or
- (3) completion of all elements of the residential structure which the Association is obligated to maintain.

The Declarant and any other Owner of a Condominium are exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

- (1) a notice of completion of the common facility has been recorded; or
- (2) the common facility has been placed into use.

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

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

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

A. Maintenance: The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area and all facilities (including Utility Facilities to the extent described in section 6.3), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Condominium as required by section 7.20. The Association shall maintain everything it is obligated to maintain in a

clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget, and in conformance with any Maintenance Guidelines and Maintenance Manual. Unless specifically provided in any Maintenance Guidelines or Maintenance Manual, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property and improvements thereon.

(1) Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including, without limitation, exterior doors, other than the hardware thereon, sky lights and other glass surfaces except for windows the cleaning and repair of which shall be the responsibility of the Unit Owners, landscaping, including irrigation systems (except for landscaping within private deck or balcony areas, which are to be cleaned, maintained by Owners as per section 7.20F). The Association shall maintain, repair and replace residential elevators.

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

(3) The Association shall be responsible for the periodic maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any interior sprinklers but excluding smoke detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. Maintenance shall include periodic testing of such equipment.

(4) In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Units and Common Area, the Association shall inspect the exterior of the Units and the Common Area improvements not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(5) Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Unit and Restricted Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

(6) In the event of any water leak or overflow from any Unit that damages any Common Area or other Unit, the Owner and occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the Unit to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association, and the Association may levy a Reimbursement Charge to recover the cost. If the damage may be covered by insurance maintained by the Association, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner.

(7) The Association shall be responsible for any maintenance required by the terms of the Master Declaration to be performed by the Association.

If a Unit Owner becomes aware of any potential problems or issues with respect to the Common Area improvements, including, but not limited to, those listed in this section 5.1A, and particularly any water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Common Area improvements.

B. Inspection and Maintenance Guidelines: The Declarant has provided the Association and each Owner with the inspection and maintenance guidelines and schedules including manufacturers' guidelines and schedules for the inspection and maintenance of the improvements within the Project ("Maintenance Guidelines"). When an Owner transfers a Unit, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Unit on or before the date of the transfer of title. Replacement copies of the Maintenance Guidelines may be obtained from the Declarant at Declarant's principal place of business. Declarant may charge a reasonable fee for providing replacement copies of the Maintenance Guidelines. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines. The Board periodically and at least once every three (3) years shall review and update the Maintenance Guidelines.

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

(2) The inspections shall be reported at the annual membership meeting and in writing, and shall include recommendations for cleaning, maintenance, repair, replacement, etc. (if any), as well as opinions of the costs. The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental specialized investigations (i.e., elevator, termite, pool, mechanical, arborist, limnologist, geologist, structural, etc).

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

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

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

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

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

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

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

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

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

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

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

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

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Condominiums, all water, gas and electric service, cable television service, wireless Communications services, garbage and trash collection, and janitorial or window cleaning service.

B. Easements: The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for communications services cable television, and Utility Facilities over the Common Area to serve the Common Areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

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

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

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in section 7.20, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four

(24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. Resident Manager Unit: Anything in this Declaration or the Bylaws or Articles to the contrary notwithstanding, the Association, upon appropriate resolution of the Board, shall have the power and authority, with the vote or written consent of a majority of Members, to purchase a Condominium to be occupied by the custodian of the Project (the "Resident Manager Unit"). In such case, during the period the Resident Manager Unit is owned by the Association:

(1) no right to vote shall be exercised on behalf of the Resident Manager Unit;

(2) no Assessment shall be assessed or levied on the Resident Manager Unit; and

(3) each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to the Resident Manager Unit, but for the provisions of this section.

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

P. Appointment of Trustee: The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in section 4.9 and California Civil Code § 1367(d).

Q. Litigation/Arbitration: The Board, subject to sections 9.11 (Enforcement of Common Area Improvement Bond) and 9.12 (Enforcement of Assessment Bond) and section 9.14 (Alternative Dispute Resolution) of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

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

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

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

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

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

ARTICLE VI UTILITIES

6.1 Owners' Rights and Duties: The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, storm sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, elevators, elevator shafts, meters, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, exhaust flues, and HVAC facilities, (collectively, "Utility Facilities") shall be as follows:

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

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

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

6.2 Easements for Utilities and Maintenance: Easements over, under and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by Declarant and its successors and assigns, until the completion of construction of the Project and sale of the Condominiums, under authority of a Public Report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be for the benefit of all Phases of the Project, and all Association Common Area[s] transferred to the Association.

The location of the Utility Facilities described in this section, and the location of the easements to accommodate such Utility Facilities, shall be set forth in the final plans for each Building. As used in this Declaration, the term plans shall mean and refer to the drawings indicating the precise locations of utility runs, elevator shafts, etc., which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans.

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

6.3 Association's Duties: The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in section 7.20. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

ARTICLE VII USE RESTRICTIONS

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

7.1 Condominium Use: No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted in any Condominium, except that residential Condominiums may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use does not interfere with the quiet enjoyment by other Owners does not include visiting clients and when conducted in the Property, business activities take place solely inside the Unit,

does not generate in-person visits by suppliers or clientele, complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; otherwise complies with the Declaration and is consistent with the residential character of the Property; the Owner or occupant does not erect, install, place or maintain any signs, logos, billboards, or other advertising materials or devices in the windows of the Unit, or on exterior of the Building, or on any Common Area, to advertise the activity; the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or odor; and the business does not increase the liability or casualty insurance obligation or premium of the Association, except that Declarant, its successors or assigns, may use any Condominium or Condominiums in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by Declarant, or until five (5) years from the date of closing of the first sale in the latest annexed Phase of the Project, whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

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

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

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

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

- A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- C. Abide by and comply with all of the Association's Rules;
- D. Supervise and be completely responsible for children at all times while they are within the project;

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

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

7.3 Permitted Vehicles and Parking: Except as otherwise permitted in this section 7.3, only Permitted Vehicles shall be parked, stored or operated within the Residential Parking Facilities.

A. Permitted Vehicles shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, trucks having carrying capacity of ½ ton or less, vans having seating capacity of eight (8) persons or less, with a maximum height of seven feet two inches (7'2"). Permitted vehicles must be of such size and possessed of such turning radius as will enable the vehicle to maneuver on ramps and within drive aisles. Owners and their tenants and invitees shall park their Permitted Vehicles only in the parking space appurtenant to or assigned to their Unit. Vehicles that are not Permitted Vehicles shall not be parked or stored in the Residential Parking Facilities. Except for commercial vehicles or construction equipment that are providing services to a Unit or the Association (but only during the period of time in which such services are being provided and subject to the Rules), Permitted Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than 1/2 ton, van having seating capacity in excess of eight (8) persons or any vehicle which is too large to fit within the Owner's assigned parking space or exceeds the maximum height of seven feet two inches (7'2"), inoperable vehicles, boats or similar equipment. Vehicles that are otherwise Permitted Vehicles that are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No excessively noisy or smoky vehicles shall be operated on the Project or in the Residential Parking Facilities. Parking spaces shall not be converted to any use (such as storage) that would prevent their use as parking spaces for the vehicle the space was designed to contain.

B. All guest parking areas shall be used in accordance with the Rules of the Association. Owners shall not park in guest spaces.

C. The Association may install a sign at each vehicular entrance to the Residential Parking Facilities containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

D. The Association may cause the removal of any vehicle wrongfully parked on Residential Parking Facilities including a vehicle owned by an occupant of a Unit. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable

and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or the Residential Parking Facilities. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. Unless the Board provides otherwise, any director or officer, any manager or manager's agent or any Owner authorized to do so by any director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Residential Parking Facilities.

The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 2005. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

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

7.5 Animals: Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Condominium, or on any other portion of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner. Owners, their tenants or other occupants of Units may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Unit, and may keep a reasonable number of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his dog to enter the Common Area except on a leash.

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

Owner shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit between the hours of 10:00 PM to 7:00 AM. An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner.

The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination. In no event shall any Owner authorize, bring or keep within the Project: (a) any pit bull, rottweiler, doberman pinscher, mastiff, canaria presa, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or vermin.

7.6 Garbage and Refuse Disposal: All rubbish, trash recycling materials and garbage shall be regularly removed from the Units, and shall not be allowed to accumulate thereon. Trash, garbage, recycling materials and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Units, Common Areas and streets. However, trash that does not fit in designated containers or trash chutes may be set out in the area designated by the Committee for a reasonable period of time (not to exceed twelve (12) hours before the scheduled collection time) on trash collection days. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. The Association shall be responsible for removal of garbage from the central pick up points. All recycling and solid waste shall be confined to approved receptacles and enclosures.

7.7 Antenna Restrictions: No Person may install on the exterior of a Condominium Building any antenna or over-the-air receiving device, except for an "Authorized Antenna" that is not prohibited under section 7.7C, without the prior written approval of the Architectural Control Committee. The use and installation of an Authorized Antenna in the Project is subject to applicable law and regulation and the following:

A. Definition: An Authorized Antenna is: (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter; or (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional televisions fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement; (c) an antenna designed to receive television broadcast signals; or (d) an antenna used to receive and transmit fixed wireless signals or broadband service. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

B. Restrictions on Installation: Subject to applicable law and regulation, an Authorized Antenna may be installed indoors or on the Exclusive Use Common Area balcony or deck in a manner that minimized the visibility of the device from the other Condominiums and adjacent real property. The foregoing locations are hereby deemed "preferred installation locations." The Architectural Control Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Condominiums. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other improvements. However, no restriction imposed hereunder or by the Committee may: (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna; (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna; or (iii) preclude acceptable quality reception.

C. Prohibitions on Installation: The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which the Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including any exterior wall of the Building, balcony or deck railings, and the roof of the Building. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

D. Review after Installation: The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this section and applicable law.

E. Restatement of Applicable Law: This section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this section.

7.8 Right to Lease:

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

- (1) all leases must be in writing;
- (2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;
- (3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;

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

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

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

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

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

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

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

A. Only the Association may construct or install improvements within the Common Area of the Project except for Exclusive Use Common Area as herein provided. There shall be no construction or installation of improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit or painting, alteration or modification of existing improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit by an Owner, his agents, tenants, contractors or other representatives, including, but not limited to, a fence, wall, obstruction, outside or exterior wiring, window mounted air-conditioning unit, screen, patio cover, tent, awning, trellis, improvement or structure of any other kind within a Unit or within Exclusive Use Common Area, except as provided for in this section 7.9 until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, an Owner may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not materially alter or impair the

structural or acoustical integrity or waterproof envelope or membrane, of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums or the Unit, and does not involve altering any Common Area (including bearing walls) and Utility Facilities. No spas or jacuzzi tubs shall be permitted in the Units.

B. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations that require review hereunder shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design.

C. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee. Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired.

D. In order to maintain noise transference levels between Units, and to comply with applicable building standards, floor covering materials that are replaced shall be replaced only with materials of equal or better quality and noise transmission specifications.

E. No landscaping shall be made or added to any decks or balconies which are visible from the street or from the Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or by an Architectural Control Committee appointed by the Board.

F. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final Public Report for the Phase 1. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Project including subsequent Phases, if any, have been sold and closed, or until the fifth anniversary of the issuance of the final Public Report for the Phase 1, whichever occurs first. After one (1) year from the date of issuance of the original Public Report for the Phase 1, Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all the Condominiums in the overall Project have been sold or until the fifth anniversary of the issuance of the final Public Report for the Phase 1, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any member to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

G. In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold

the Committee, the Board, the Association, and its members harmless from any and all liability arising out of such approval. The Committee shall meet as necessary to perform its duties. The Committee may, by resolution unanimously adopted in writing, designate a Committee Representative (who may be a licensed architect or other professional consultant retained by the Committee) to review Applications and recommend action to be taken by the Committee or to take any other action or perform any other duties for and on behalf of the Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Committee constitutes an act of the Committee. All approvals issued by the Committee must be in writing. Verbal approvals issued by the Committee, any individual Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

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

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

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

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of 30 days from the date of such notification, if the Committee is undertaken the

architectural review functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board is undertaken the architectural review functions under this Article, the Board shall act after expiration of 30 days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, or remove the same within a period of not more than 45 days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, (3) institute legal proceedings to enforce compliance or completion.

After ninety percent (90%) of the Units in the Project have been sold by the Declarant, an Owner who has submitted an application to the Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

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

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

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

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

7.11 Window Treatments: All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or the Architectural Control Committee. No window air-conditioning Units may be installed in the Project. Owners shall take care to see that any items placed in their Units where visible from other Units, from the Common Areas, or from public streets, are in good taste and not offensive.

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

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

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

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

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

7.17 Water Bed Restrictions: No water beds shall be permitted.

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

7.19 Common Area Use: Nothing shall be stored, grown, or displayed in the Common Area, including decks or balconies that is not approved in advance by the Architectural Control Committee.

7.20 Owner's Right and Obligation to Maintain and Repair:

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

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

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

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

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

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

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

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

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

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

7.25 Smoking Restrictions: Smoking shall not be permitted in any indoor (enclosed) portion of the Common Area, at anytime, including any stairways, hallways or elevators, or within twenty (20) feet of any lobby, vestibule or stairway, provided that smoking is permitted within Exclusive Use Common Area balconies, decks, or patios, subject to Rules.

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

ARTICLE VIII INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 Insurance: The Association shall obtain and maintain the insurance as required by the Master Declaration, and at a minimum shall include the following coverages:

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project including those portions of the Units consisting of all fixtures, installations or additions comprising a part of the Building(s) housing the Units and all built-in or set-in appliances, cabinets and floor coverings, in the amount designated by Declarant as the original replacement cost thereof

based on the standard package of appliances, cabinets and floor coverings offered to all Owners before the Close of Escrow) with policy limits of either: [a] full replacement value of the covered improvements or [b] no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 8.1A, below. The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

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

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

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

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

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

(6) officers and directors liability insurance in the minimum amounts required by California Civil Code §§ 1365.7;

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

(8) earthquake insurance to the extent required by law, and if not required by law, then only to the extent available at commercially reasonable rates in the opinion of the Board.

The decision to begin maintaining earthquake insurance coverage and the decision to cease maintaining earthquake insurance coverage shall be made solely by a vote of a majority of the Owners other than Declarant. Such a vote may be called for by any Owner other than Declarant by written request to the Board, but no such vote shall be had more often than once in any twelve-month period. Such vote shall be conducted within ninety (90) days following an Owner's request therefor. After receiving an Owner's request for such vote, prior to the vote, the Board shall obtain, to the extent reasonably available, a reasonable variety of proposals from insurance companies to provide earthquake insurance coverage, and shall make copies of such proposals available to the Owners to aid in their decision-making process. If the Owners decide to begin maintaining earthquake insurance coverage, the Board shall thereafter determine the particular types and amounts of earthquake insurance coverage to be maintained, and shall continue to maintain such

coverage until such time as the Owners may decide by majority vote to cease maintaining earthquake insurance coverage. Notwithstanding the foregoing, from time to time, if changes in the cost of earthquake insurance coverage, taken together with other changes in costs and expenses to be incurred by the Association, would result in Regular Assessments or Special Assessments that would otherwise require approval pursuant to section 4.4, earthquake insurance coverage shall not be maintained unless the applicable Regular Assessments or Special Assessments are approved pursuant to section 4.4, and the Board shall not be required to continue to maintain earthquake insurance coverage in the absence of such approval. As the decision to maintain or not maintain earthquake insurance coverage is vested solely in the Owners other than Declarant, the Owners acknowledge and agree that the Board shall not be under any duty to consider whether or not to maintain earthquake insurance coverage. No vote shall be taken under this section until such time as at least twenty (20) Units are not owned by Declarant.

A. Amount, Term and Coverage. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 8.1(8) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

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

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

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

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

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

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

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

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

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

8.2 Damage or Destruction: The following provisions are supplemental to the destruction and restoration provisions of the Master Declaration. In case of any inconsistency between these provisions and those of the Master Declaration, the Master Declaration provision shall prevail. If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and

three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

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

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

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

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

(4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

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

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

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement

immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

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

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

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this section 8.2, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code § 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this section 8.2B, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective Mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.3 Condemnation: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event

of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance of the award, he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in section 8.2.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in section 8.2.

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

ARTICLE IX GENERAL PROVISIONS

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

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

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

the covenants and restrictions in whole or in part, or to terminate the same.

9.4 Amendments:

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

B. Amendment by Members: After sale of the first Condominium, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the California Department of Real Estate. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County. Notwithstanding anything in this Declaration to the contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code § 1351(e) or any successor statute.

C. Amendments Regarding Initiation of Construction Defect Claims: Notwithstanding anything to the contrary contained in this Declaration, sections 9.4C, 5.1A, 5.1B, 7.1, 7.9, 9.7, 9.8 and 9.14 shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

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

9.5 Encroachment Rights: If any portion of the Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the city engineer (in the case of a subdivision map or parcel map). If the correction occurs after title to the Association Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction. The modification may also be made by lot line adjustment, if more appropriate.

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

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

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

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

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

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

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

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

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

D. Consent to Action:

(1) Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, and further excepting the Annexation rights under section 2.6 and any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or Phased development contained in the original Governing Documents:

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

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

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

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

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

(b) change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Undivided Interest Common Area; provided that no Owner's undivided interest in the Undivided Interest Common Area may be changed without the consent of that Owner;

(c) partition or subdivide any Condominium;

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

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

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

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

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

H. Priority of Liens: Any Assessment Lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each First Lender who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such First Lender or purchaser at a Foreclosure takes

title to the Condominium, except for claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

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

J. Termination of Professional Management: When professional management has been previously required by the Governing Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages.

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

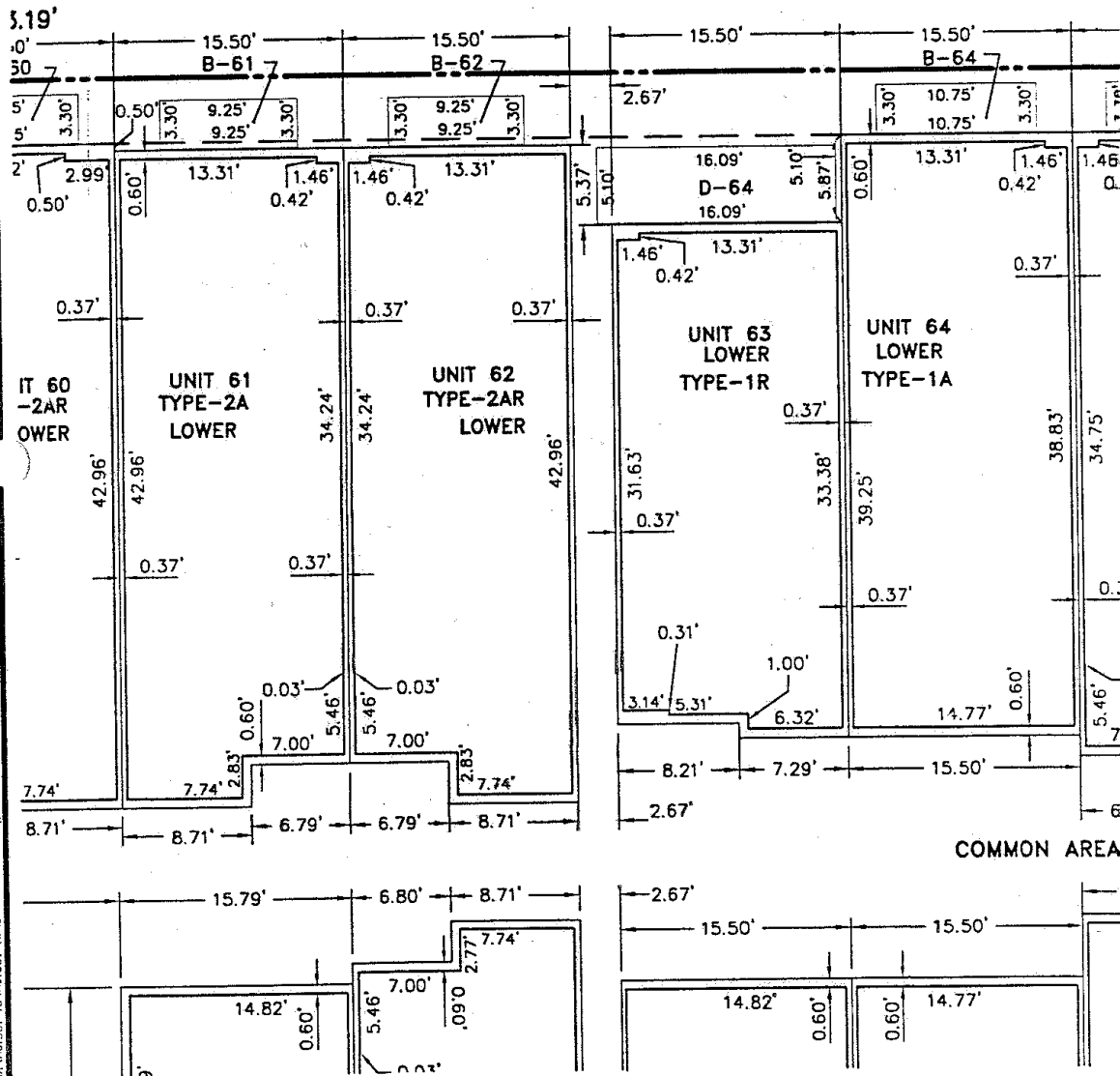
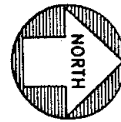
L. Right to Appear at Meetings: Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

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

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

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

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



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KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 1233 Quarry Lane, suite 145 (925) 249-6555
 Pleasanton, California 94566 Fax (925) 249-6563

EXHIBIT "A"
 BAY STREET CONDOMINIUMS
 CONDOMINIUM PLAN
 LOTS 8 & 10 TRACT 7661
 BLDG D FLOOR PLAN LEVEL 3

SCALE	1"=10'
DATE:	4/1/2005
L.S.:	MJF DRAFTER: AM
JOB NO.	A01551-13
	41 of 114

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

E. Subject Declarant to the architectural control provisions of section 7.9 or the Contractor Rules of Section 7.27, for construction of any Condominium or other improvements on the Project.

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

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

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

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

In the event of a violation of the Governing Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Condominium of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Condominium with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

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

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

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

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be necessary to effect the release of the Bond. The Association shall not condition its approval of the release of the Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.14 of this Declaration.

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

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

If the Association delivers to the escrow holder of the Bond a demand for remittance of the Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular Assessments or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the Bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the Bond, the return or remittance of the Bond and other disposition of matters set forth in said escrow instructions with respect to the Bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in section 9.14E hereof.

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

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

A. Claims for Declaratory Relief or Enforcement of Governing Documents: Prior to the filing of a civil action solely for declaratory relief or injunctive relief to enforce the Governing Documents, or for declaratory relief or injunctive relief to enforce the Governing Documents in conjunction with a claim for monetary damages not in excess of Twenty Five Thousand Dollars (\$25,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code sections 1369.510 – 1369.580. The Board shall comply with the requirements of California Civil Code section 1369.590 by providing Members of the Association annually with a summary of the provisions of Article 2 (commencing with Civil Code section 1369.510) of Chapter 7 of Title 6 (Division 2, Part 4) of the California Civil Code, including the following language: "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

B. Design or Construction Defect Claims:

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

All Claims shall be made in accordance with the Home Builders Limited Warranty prior to filing any civil action, arbitration or action regarding such Claim,

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

If the Claim is not resolved by and pursuant to the Home Builders Limited Warranty, subject to the provisions of Civil Code section 1375 and 1375.05, as may be applicable, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of section 9.14D of this Declaration [Arbitration of Disputes].

C. Notices to Members of Legal Proceedings Against Declarant. In accordance with Civil Code Section 1368.4, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

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

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

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

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

(2) the neutral and impartial arbitrator shall be appointed by Construction Arbitration Services, Inc. as provided in the Home Builders Limited Warranty. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

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

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

(5) the arbitration shall be conducted in accordance with the Commercial Rules of Construction Arbitration Services, Inc.;

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

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

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

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant

to California Civil Code Section 895 et seq., as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1;

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

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

(12) AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.

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

b. **WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY AND THE ASSOCIATION, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, THE ASSOCIATION OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

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

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

9.17 Condominium Plan Consent: Declarant, by its execution of this Declaration, and any beneficiary under a deed of trust encumbering the Project, by its subordinating to this Declaration, certify that each consents to the recordation of the Condominium Plan attached hereto as Exhibit "A" and incorporated here, pursuant to the requirements of California Civil Code §§ 1350-1372.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this 24th day of September, 2005.

BAY STREET CONDOMINIUMS, LLC
a Delaware limited liability company

By: _____
Its: _____

JON KNORPP

STATE OF CALIFORNIA

COUNTY OF *San Francisco*

)
) ss.
)

On this 7th day of September, 2005, before me, Lyn D. Gonzalez Moreno
a notary public for the state, personally appeared Jon Knopp, known to me or
~~proved to me on the basis of satisfactory evidence~~ to be the person(s) whose name(s) is/are
subscribed to the within instrument, and acknowledged to me that he/~~she~~ they executed the same in
his/~~her~~ their authorized capacity(ies), and that by his/~~her~~ their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Lyn D. Gonzalez Moreno
Notary Public, State of California

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I declare under penalty of perjury that the Notary Seal on the document to which this statement is attached, reads as follows:

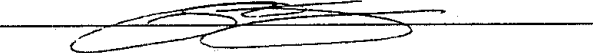
Name of Notary Public: Lyn D. Gonzalez Moreno

Commission number: 1439745

Notary Public State: California

Notary Public County: San Francisco

My commission expires: September 16, 2007

Signature of Declarant: 

Print Name of Declarant: Ross Kennedy

City and State of Execution: Pleasanton, California

Date Signed: September 12, 2005