

DOC# 2019-0330371



Aug 07, 2019 11:52 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$461.00 (SB2 Atkins: \$75.00)

PAGES: 125

Recording Requested By:

CITYFRONT TERRACE HOMEOWNERS
ASSOCIATION

When Recorded, Return To:

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For Recorder's Use

2018 AMENDED AND RESTATED
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
FOR
CITYFRONT TERRACE
A Residential Condominium Community

NOTICE
(Gov. Code § 12956.1)

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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**2018 AMENDED AND RESTATED
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
FOR
CITYFRONT TERRACE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") for CITYFRONT TERRACE is made by CityFront Terrace Homeowners Association ("Association") with reference to the facts set forth in the Article hereof entitled "Recitals."

ARTICLE 1 - RECITALS

1.1 **Property** . The Association is a corporation whose Members are the Owners in fee simple of that certain real property ("Property") situated in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein.

1.2 **Nature of Project**. The Property was developed as a Condominium Project within the meaning of California Civil Code section 4125, and the Property is subject to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code section 4200 et seq., or any successor statutes or laws.

1.3 **Description of Project**. The Project (as hereinafter defined) is a residential development containing three hundred twenty (320) Condominiums. Each Owner of a Condominium receives title to a Unit plus an undivided fractional interest as tenant in common to the Common Area. In addition, each Owner of a Condominium receives the exclusive right of use and occupancy to any Exclusive Use Easements which are shown on the Condominium Plan (as hereinafter defined) as being appurtenant to the Unit. Each Owner of a Condominium also receives an easement for ingress, egress and recreational use over portions of the Common Area, subject to any restrictions set forth herein or now or hereafter of record. Each Condominium has appurtenant to it a membership in the CityFront Terrace Homeowners Association, a California nonprofit mutual benefit corporation ("Association").

1.4 **Declaration Being Restated**. Ownership of the Units is currently subject to the following:

- 1.4.1 Re-Recording of First Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded July 7, 2000, as File/Page No. 2000-0359098;

- 1.4.2 The Supplementary Declaration, recorded February 5, 2002, as File/Page No. 2002-0098598;
- 1.4.3 The Amendment to First Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded February 11, 2013, as File/Page No. 2013-0093211; and
- 1.4.4 The Second Amendment to First Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded on August 6, 2013, as File/Page No. 2013-0493655;

all in the Official Records of the San Diego County Recorder's Office, and hereinafter referred to together as the "2000 Declaration," unless the context clearly indicates otherwise.

1.5 **Restatement.** The Association now desires to amend and restate the 2000 Declaration in its entirety by recording this Declaration. The Association further desires that, upon recordation of this Declaration, the Project shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Declaration take the place of and relate back in time to the recording of the 2000 Declaration.

1.6 **Amendment Requirements.** The 2000 Declaration, in Section 15.2, provides that it may be amended by the affirmative vote of fifty-one percent (51%) of the Voting Power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of the Voting Power has been obtained.

1.7 **Material Amendments.** The 2000 Declaration, in Section 15.2, provides that in addition to approval of the Voting Power, material amendments, as defined, require the approval of sixty-seven percent (67%) of the Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of the Voting Power has been obtained and there are no Eligible Holders.

1.8 **California Civil Code Section 4270.** Under California Civil Code section 4270, an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the 2000 Declaration for such purpose, and (3) the writing has been recorded in the County in which the Project is located.

DECLARATION

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

ARTICLE 2 - DEFINITIONS

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

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

2.2 **Annual Budget Report.** [Civ. Code § 5300] The term "Annual Budget Report" means the report to be distributed annually which contains the operating budget and other financial information as more fully described in Applicable Law.

2.3 **Annual Policy Statement.** [Civ. Code § 5310] The term "Annual Policy Statement" means the information about Association policies to be distributed annually as more fully described in Applicable Law.

2.4 **Applicable Law.** The term "Applicable Law" shall mean statutes, public laws, ordinances, regulations and rulings of administrative agencies, and court rulings having value as precedent and any other requirements having the force of law that are in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Documents provision in question. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Project if they cease to be applicable by operation of Applicable Law, or if they are replaced or superseded by one or more statutes or ordinances.

2.5 **Architectural Committee.** The term “Architectural Committee” shall mean the committee created pursuant to the Article hereof entitled “Architectural Committee.”

2.6 **Architectural Guidelines.** The term “Architectural Guidelines” shall mean the design criteria adopted by the Architectural Committee pursuant to the provisions of Section 9.7 of this Declaration.

2.7 **Articles.** The term “Articles” shall mean the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.8 **Association.** The term “Association” shall mean the CityFront Terrace Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.9 **Association Rules.** The term “Association Rules” shall mean the rules and regulations adopted by the Board from time to time.

2.10 **Board.** The term “Board” shall mean the Board of Directors of the Association.

2.11 **Budgeted Gross Expenses.** The term “Budgeted Gross Expenses” shall mean all expenses identified on the annual operating budget for the fiscal year, including all operating expenses and amounts to be deposited into the reserve accounts, but excluding any amounts budgeted to be expended from the reserve accounts for that fiscal year.

2.12 **Bylaws** The term “Bylaws” shall mean the Bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.13 **Capital Improvement Assessments.** The term “Capital Improvement Assessments” shall mean the assessments which are levied pursuant to the provisions of Section 6.6 of this Declaration.

2.14 **City.** The term “City” shall mean and refer to the City of San Diego, California.

2.15 **Common Area.** The term “Common Area” shall mean and refer to all portions of the Property not located within a Unit, as defined in this Declaration and as shown on the Condominium Plan.

2.16 **Condominium.** The term “Condominium” means an estate in real property as defined in California Civil Code section 4125, or any successor statute or law, consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium.

2.17 **Condominium Plan.** The term “Condominium Plan” shall refer to the condominium plan recorded pursuant to California Civil Code section 4120 respecting the Project, and any amendments to such plans.

2.18 **County.** The term “County” shall mean and refer to the County of San Diego, California.

2.19 **Declaration.** The term “Declaration” shall mean and refer to this 2018 Amended and Restated Declaration of Covenants, Conditions and Restrictions of CityFront Terrace, as said Declaration may from time to time be amended, modified or supplemented.

2.20 **Designated Exclusive Use Common Area Walls or Floors.** The term “Designated Exclusive Use Common Area Walls or Floors” shall refer to those portions of the Common Area consisting of walls and internal equipment, within such walls or floors such as plumbing, ventilating and electrical wires, which are located between two (2) adjacent Units (either horizontally or vertically) over which an Exclusive Use Easement is or has been assigned by the Association if an Owner acquires or acquired fee title to the two (2) adjacent Units separated by such wall or floor, subject to compliance with the requirements of this Declaration.

2.21 **Electronic Transmission.** [Corp. Code §§ 20 & 21] The term “Electronic Transmission” shall mean a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

2.22 **Eligible Holder.** The term “Eligible Holder” shall mean any First Mortgagee who has given written notice to the Association specifying its name, address and the Unit number or address of the property encumbered by the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.23 **Enforcement Assessments.** The term “Enforcement Assessments” shall mean the assessments which are levied pursuant to the provisions of Section 6.9 of this Declaration.

2.24 **Exclusive Use Balcony Common Area.** The term “Exclusive Use Balcony Common Area” shall refer to that portion of the Exclusive Use Common Area designated for balcony purposes appurtenant to certain Units within the Project as designated on the Condominium Plan.

2.25 **Exclusive Use Common Area or Exclusive Use Easements.** The term “Exclusive Use Common Area” or “Exclusive Use Easements” shall mean and refer to those portions of the Common Area over which exclusive easements are reserved for the benefit of certain Owners in accordance with California Civil Code section 4145, including without limitation, Patio Exclusive Use Common Areas, Exclusive Use Balcony Common Areas and Designated Exclusive Use Common Area Walls or Floors as may be shown on the Condominium Plan and/or described in this Declaration to which an exclusive use easement is granted to an Owner and is appurtenant to such Owner’s

Unit. Except as specifically provided in this Declaration and the Condominium Plan, no other portion of the Common Area shall be an Exclusive Use Common Area. The term "Exclusive Use Easement" shall also include any Parking Space or Storage Space which is assigned to an Owner for their exclusive use pursuant to the terms of this Declaration.

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

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

2.28 Governing Documents. The term "Governing Documents" shall collectively refer to this Declaration and the Articles, Bylaws, Architectural Guidelines and the Association Rules.

2.29 Hazardous Materials. The term "Hazardous Materials" refers to any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; or (ii) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," "RCRA hazardous waste," "recyclable material," under any federal, state or local statute or regulation promulgated thereunder.

2.30 Improvements. The term "Improvements" shall mean any alteration or modification to a Unit, Exclusive Use Common Area or the balance of the Common Area or any addition to a Unit or the Common Area, including, without limitation, room partitions, structural alterations to any portion of a Unit, changes of level or grade of an Exclusive Use Common Area, fences, walls, patios, patio covers, screening walls, skylights, stairs, decks, hedges, windbreaks, window tinting, landscaping, plantings, planted trees, and shrubs, utility facilities, poles, signs, and all other structures or improvements of every type and kind installed or erected on the Property.

2.31 Institutional Mortgagee. The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity of institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any federal or state agency; (iv) the State of California as the vendor under an installment land sales contract covering a Unit; or (v) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Unit.

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

2.33 **Lease.** The term “Lease” means any lease, license or other agreement whereby an occupant acquires rights to use or occupy any portion of the Units.

2.34 **Member.** The term “Member” shall mean every person or entity who holds a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

2.35 **Mortgage.** The term “Mortgage” shall mean any duly recorded Mortgage or deed of trust encumbering a Unit in the Project.

2.36 **Mortgagee.** The term “Mortgagee” shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

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

2.38 **Owner.** The term “Owner” shall mean:

2.38.1 Any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Condominium, as evidenced by a deed recorded in the San Diego County Recorder’s Office, including the Association, and any contract sellers under recorded contracts of sale.

2.38.2 A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest for security for the performance of an obligation shall not be Owners.

2.38.3 For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other legal entity, any Director, Officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. For Residential Units held in trust, the trustee may exercise the membership rights attributable to the trust.

2.38.4 A person or entity is not an Owner due to: (1) community property or other marital rights where the person asserting such rights is not shown on the recorded title as an Owner; (2) rights of adverse possession not adjudicated and shown on the recorded title as an Owner; or (3) other equitable rights where the person asserting such rights is not shown on the recorded title as an Owner.

2.39 **Parking Garage.** The term "Parking Garage" shall refer to the parking garage situated within the Project and delineated on the Condominium Plan.

2.40 **Parking Spaces.** The term "Parking Spaces" shall mean those areas within the Parking Garage designated for parking purposes as shown on the Condominium Plan.

2.41 **Patio Exclusive Use Common Area.** The term "Patio Exclusive Use Common Area" shall mean that portion of the Exclusive Use Common Area designated for patio purposes appurtenant to certain Units within the Project as designated on the Condominium Plan.

2.42 **Project.** The term "Project" shall mean all of the real property described on Exhibit "A" together with all Improvements situated thereon.

2.43 **Property.** The term "Property" shall include all of the real property described in Exhibit "A" of this Declaration.

2.44 **Public Park Area.** The term "Public Park Area" shall refer to that certain park area situated adjacent to the Property which is dedicated for public park purposes and open to use by the public, as described in that certain Landscape Maintenance Agreement recorded as File/Document No. 1992-0538026 on August 25, 1992, and the First Amendment to Landscape Maintenance Agreement, and Settlement and Release Agreement recorded as File/Document No. 2006-0550801, both in the Office of the County Recorder of San Diego and any amendments thereto.

2.45 **Regular Assessments.** The term "Regular Assessments" shall mean the assessments which are levied pursuant to the provisions of Section 6.4 of this Declaration.

2.46 **Reimbursement Enforcement Assessments.** The term "Reimbursement Enforcement Assessments" shall mean the Enforcement Assessments levied under Section 6.9.1 of this Declaration.

2.47 **Special Assessments.** The term "Special Assessments" shall mean the assessments which are levied pursuant to the provisions of Section 6.5 of this Declaration.

2.48 **Storage Spaces.** The term "Storage Spaces" shall refer to the storage spaces located within the Parking Garage.

2.49 **Unit.**

2.49.1 The term "Unit" shall mean the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Project, such Units and their respective elements and boundaries being shown and

particularly described in the Condominium Plan, the deeds conveying Condominiums and this Declaration.

- 2.49.2 Each Unit shall be a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan; provided, however, that the following are not part of any Unit: bearing walls, columns, floors, roofs, foundations, central heating and other central services, pipes, ducts, flues, chutes, conduct wires and other utility installations, wherever located, except the outlets thereof when located in the Unit.
- 2.49.3 Each Unit shall include any door within a perimeter wall, the interior undercoated surfaces of bearing walls and perimeter walls, heat pumps, floors and ceilings, the outlets of all utility installations in the Unit, including the fire box of any fireplace located in the Unit.
- 2.49.4 In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial conformance 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 Condominium Plan or deed and those of the building.

2.50 **Voting Power.** The term "Voting Power" refers to the total voting power of the Association as set forth in Section 5.2 based on one vote per Condominium, less the votes of any Condominium where voting rights have been suspended.

ARTICLE 3 - OWNERSHIP AND EASEMENTS

3.1 **Ownership of Condominium.** Title to each Condominium in the Project shall be conveyed in fee to an Owner. Ownership of each Condominium within the Project shall include (a) a Unit, (b) an undivided interest in the Common Area, (c) a membership in the Association, and (d) any exclusive or non-exclusive easement or easements appurtenant to such Condominium or otherwise granted in favor of an Owner over the Common Area as described in this Declaration, the Condominium Plan, and the deed to the Condominium. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration.

3.2 **No Separate Conveyance.** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Unit owned by the Owner. No Unit shall be conveyed by the Owner separately from the interest in the Common Area.

Any conveyance of any Unit shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance.

3.3 ***Delegation of Use.*** Any Member entitled to the right and easement of use and enjoyment of the Common Area may delegate, in accordance with the Bylaws, such Owner's right to use and enjoyment of the Common Area to such Owner's invitees who reside in such Owner's Condominium, subject to reasonable regulations by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the recreational facilities or equipment of the Common Area for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.4 ***Rights in Common Area.***

3.4.1 Association Easement. The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in this Declaration.

3.4.2 Partition. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall any Owner or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration.

3.4.3 Member's Easements in Common Area. Subject to the provisions and restrictions of this Declaration, every Member of the Association shall have, for himself or herself and such Owner's Invitees, a nonexclusive easement of access, egress, use and enjoyment of, in, to and over the Common Area, and such easement shall be appurtenant to and shall pass with title to every Condominium in the Project.

3.4.4 Declaration Subject to Easements. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

3.4.5 Utilities. These are reserved and granted for the benefit of each Unit, as dominant tenement over, under, across and through the Project (including the Common Area and each other Unit), as the servient tenement, non-exclusive easements for utility services, including access to drains.

- 3.4.6 Encroachment. There are hereby reserved and granted for the benefit of each Unit, as dominant tenement over, under and across each other Unit and Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement over, under and across each Unit, as servient tenement, nonexclusive easements for encroachment, support, occupancy and use of such portions of Units and/or Common Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other Improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design as modified by any approved modifications and upgrades. The easement for the maintenance of the encroaching Improvement shall exist for as long as the encroachments exist; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.
- 3.4.7 Support, Maintenance and Repair. There is hereby reserved and granted a nonexclusive easement appurtenant to the Common Area and to all other Units, as dominant tenements, through each Unit and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Units.

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

- 3.5.1 Easements on Condominium Plan. The Common Area and Units are subject to the easements and rights of way shown on the Condominium Plan and any Subdivision Map.
- 3.5.2 Easements for Common Area. Subject to the provisions of this Declaration, every Owner shall have a nonexclusive easement of use and enjoyment in, to and throughout the Common Area

for ingress and egress over and through the Common Area; provided, however, that such nonexclusive easements shall be subordinate to, and shall not interfere with, any Exclusive Use Common Areas over the Common Area appurtenant to Units or Exclusive Use Easements granted for Parking Spaces and Storage Spaces under this Declaration. Each such nonexclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the rights and restrictions set forth below and as otherwise set forth in this Declaration.

- (a) Suspend Rights of Members. The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.
- (b) Dedicate or Grant Easements. The Association shall have the right to dedicate and/or grant easements over all or any portion of the Common Area.
- (c) Parking.
 - (i) Parking Rights. Residential Units are assigned an exclusive easement over a Parking Space or Parking Spaces in the Parking Garage ("Assigned Parking Spaces") and certain Residential Units are assigned the right to have a certain number of vehicles parked in the Parking Garage in an unassigned space through valet parking ("Valet Spaces"). The Association shall not have the right to change or modify such designation (except for temporary relocations or relocations that may be necessary in connection with repair or restoration as provided below). Upon conveyance of a Condominium by an Owner to another Owner, the parking rights assigned to the conveying Owner shall automatically inure to the benefit of the new Owner. Owner shall have the exclusive right to the use of the Parking Spaces so assigned, subject to the rights of the Association set forth below.
 - (ii) Relocation Rights. The right of an Owner to use or occupy a Parking Space which has been assigned to such Owner shall be subject to the rights of the Association to temporarily relocate such Parking Space as described below. The

Association, upon reasonable notice, shall have the right to temporarily relocate an Owner's assigned Parking Spaces in order to accommodate any construction, maintenance or repairs of improvements located within this Project. If any assigned Parking Space is permanently affected by such construction, maintenance or repair, the Association shall have the right to exchange the affected Parking Space for another available Parking Space. In the event that there is no other Parking Space available for such temporary relocation or exchange, the affected Owner shall be provided with valet parking until another Parking Space or the affected Parking Space is available for such Owner's use. Each Owner, by accepting a deed to a Condominium, hereby acknowledges that such activities of the Association may impair the use of such Owner's assigned Parking Spaces and may constitute an inconvenience or nuisance to the Owners, hereby consents to such impairment, inconvenience or nuisance, and agrees to indemnify the Association against any claims with respect to such matters.

- (d) Storage Spaces. Residential Units are assigned an exclusive easement for a Storage Space. Owners shall have the exclusive right to the use of the Storage Spaces so assigned, subject to the rights of the Association set forth below. The right of an Owner to use or occupy a Storage Space which has been assigned to such Owner shall be subject to the rights of the Association to temporarily relocate such Storage Space as described below. The Association, upon reasonable notice, shall have the right to temporarily relocate an Owner's assigned Storage Spaces in order to accommodate any construction, maintenance or repairs or Improvements located within this Project. Each Owner, by accepting a deed to a Condominium, hereby acknowledges that such activities of the Association may impair the use of such Owner's assigned Storage Spaces and may constitute an inconvenience or nuisance to the Owners, hereby consents to such impairment, inconvenience or nuisance, and agrees to indemnify the Association against any claims with respect to such matters.

- (e) Entry to Association. The Board or the Association's agents or employees shall have the right to enter (a) upon any portion of the Common Area or a Unit to effect emergency repairs in accordance with the provisions of this Declaration, (b) upon any portion of the Common Area to perform any maintenance of the Common Area, or (c) upon any portion of a Unit or the Common Area for any purpose reasonably related to the performance by the Board of its responsibilities under this Declaration.
- (f) Limit Guests. The Association shall have the right to limit, on a reasonable basis, the number of guests and tenants of the Owners using the recreational facilities and other facilities situated within the Common Area. Any such limitation or restriction shall be set forth in the Association Rules.
- (g) Restricted Areas. The Association shall have the right to restrict access to certain areas of the Project pursuant to the provisions of Section 7.34 of this Declaration, including the roof, utility rooms, portions of the Parking Garage, and other areas deemed unsafe for entry by the Association.
- (h) Charge Fees. The Association shall have the right to charge fees for guest parking and for the parking of any vehicles by an Owner in excess of the rights assigned under Section 3.5.2(c).
- (i) Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Common Area, and to hypothecate any or all real or personal property owned by the Association, provided that the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the Budgeted Gross Expenses of the Association shall require the consent of fifty-one percent (51%) of the Voting Power of Members. Notwithstanding the foregoing, the Association shall have the right to borrow money from any public or governmental agency in excess of five percent (5%) of the Budgeted Gross Expenses of the Association without the consent of the Owners, if such loans are below the then current market rates offered by commercial or private sector lenders.

- (j) Adopt and Enforce Association Rules. The Association shall have the right to adopt and enforce the Association Rules as provided in this Declaration.
- (k) Creation of Designated Exclusive Use Common Area Walls or Floors. The Association shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Units, without amending this Declaration or the Condominium Plan, an Exclusive Use Easement on and through any demising walls or floors separating two (2) or more Units and the right to alter, modify or remove such demising walls or floors subject to the consent of the Association and conformance with the requirements of the Architectural Committee, pursuant to the provisions of the Section of Article 9 entitled "Scope of Architectural Review."

3.6 **Exclusive Easements Granted to Owners.** Each Owner shall have an exclusive easement over the Exclusive Use Common Area appurtenant to his or her Unit, subject to the right of entry of the Association set forth in the Section above entitled "Entry by Association," including, without limitation, the right of the Association to obtain access to the Patio Exclusive Use Common Areas and Exclusive Use Balcony Common Areas for the purpose of performing its maintenance obligations hereunder.

3.7 **Access by Public.** As a condition to the approval of the Project by the City, there is an easement over a certain portion of the Common Area which is part of the linear park established by the City of San Diego commonly referred to as Dr. Martin Luther King, Jr. Promenade. Each Owner, by acceptance of a deed, acknowledges that members of the public shall be permitted to use that certain portion of the Common Area which is subject to such easement.

3.8 **Public Park Area.** Each Owner acknowledges that although the Public Park Area may be maintained by the Association, such Public Park Area is not owned by the Association and is dedicated and used as a public park. In addition to the right of the Association to impose assessments, it is hereby acknowledged that, at some time in the future, an assessment district may be formed for the maintenance, upkeep and replacement of the Public Park Area ("Assessment District"). Such Assessment District may include other property in the City and provide for the maintenance of the entire linear park of which the Public Park Area is a part. If such Assessment District is formed, the Assessment District will levy an assessment upon each Owner and, to the extent the Assessment District assumes the maintenance and repair obligations for the Public Park Area, the Association shall then be relieved of such maintenance responsibilities. Each Owner, by accepting a deed for a Condominium, hereby waives their right to resist, contest, protest or otherwise oppose establishment of such an Assessment District and/or the imposition of assessments levied under such Assessment District and agrees not to participate in or otherwise support any organized resistance or opposition to such formation.

3.9 **Light, Air and View.** No Owner shall have an easement for light, air or view over the Unit of another Owner and no diminution of light, air or view by any Building or Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Project; provided, however, that the following provision shall not relieve any Owner from obtaining the approvals required pursuant to Article 9 hereof with respect to any modification to such Owner's Improvements.

ARTICLE 4 - THE ASSOCIATION

4.1 **The Organization.** The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. The Association is charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration, including, but not limited to, ownership, control and maintenance of the Common Area and any facilities on the Common Area.

4.2 **Association Action; Board of Directors and Officers; Members' Approval.** Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if approved by a majority vote of a quorum of Members in accordance with the Bylaws.

4.3 **Powers and Duties of Association.**

4.3.1 **Powers.** The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

(a) **Assessments.** The Association shall have the power to establish, fix and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration.

(b) **Right of Enforcement and Notice of Hearing.**

- (i) Enforcement Actions. The Association in its own name and on its own behalf, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents.

- (ii) Notice Requirements. However, before a decision to impose such a suspension or monetary penalties is reached by the Board, at least ten (10) days' written notice of suspension or imposition of monetary penalties and the reasons therefore must be given to the Owner of such suspension or imposition of a penalty or any such longer period as may be required under California Civil Code section 5855, or any successor Applicable Law. Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of monetary penalty is to take effect. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first-class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

- (iii) Monetary Penalties. Any monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or Board resolutions or as means of reimbursing the Association for costs incurred by the Association in the repair of

damaged Common Areas for which the Member was allegedly responsible or in bringing the Member's Unit into compliance with the Governing Documents or Board resolutions is not to be characterized or treated as an assessment which may become a lien against the Member's Unit enforceable by a sale of the interest in accordance with the provisions of sections 2924, 2924(b) and 2924(c) of the California Civil Code. Each suspended or fined Owner or other person can appeal such action, including any claim alleging defective notice, within one (1) year of the date of action taken by the Board, by filing written notice of his intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all Board members at a regular or special meeting of the Board at which all Board members are present. The Owner or other person to be fined or suspended can appear, be represented by counsel and be heard at the meeting. Except as provided in this Section, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Unit if the Owner does not comply with provisions of the Governing Documents, except when the loss or forfeiture is the result of a court judgment or arbitration decision or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association. In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

- (c) Delegation of Powers; Professional Management. The Association, acting by and through the Board, can delegate its powers, duties and responsibilities to committees or employees, including a professional managing agent ("Manager"), subject to the requirements of the Section of Article 4.4.2 entitled "Professional Management Contracts."

- (d) Association Rules. The Board shall have the power to adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the use of the Project, including the Units and Common Area by all Owners, or their Invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the Articles, or Bylaws, the conflicting Association Rule shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws.
- (e) Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Board or any authorized Representative thereof shall have the right, upon forty-eight (48) hours' prior notice and during reasonable hours, to enter any Unit and the Improvements thereon for the purpose of construction, maintenance or emergency repair for the benefit of the Common Area or the Owners or for the purpose of maintaining and repairing the Improvements located within said Unit as provided in this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. The cost of such maintenance or repair shall be assessed against said Owner as an enforcement Assessment in accordance with the provisions of the Article hereof entitled "Assessments and Dues."
- (f) Easements and Rights of Way. The Association, acting by and through the Board and without the vote of the Owners, may grant and convey to any Owner, pursuant to the provisions of this Declaration, the Designated Exclusive Use Common Area Walls or Floors and may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Common Area Walls or floors and may grant and convey to any third party easements and license for use and rights of way in, on, over or under any Common Area conveyed or otherwise transferred to said Association or under its jurisdiction in accordance with the provisions of this Declaration.

- (g) Dedication. The Association, acting by and through the Board, may dedicate any of its property to an appropriate public authority for public use as provided for in this Declaration.
- (h) Other Property. The Association, acting by and through the Board, may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in Subsection 4.5.2.
- (i) Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Common Area and/or the Project necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in Subsection 4.5.4 below.
- (j) Enter into Assessment District. The Association shall have the power to enter into an assessment district for the purpose of managing and maintaining the Public Park Area and to represent the Owners in the formation of such Assessment District.
- (k) Special Services for Members. The Association shall have the power to provide special services to an Owner. The payment for the services may be collected as a Reimbursement Enforcement Assessment pursuant to the provisions of Article 6 of this Declaration.
- (l) Settlement of Construction Disputes. The Association shall have the power to settle and release any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Project or any portion thereof on behalf of all Owners and each Owner, hereby agrees to designate such authority to the Association and assigns to the Association all power and authority as is necessary for the settlement or release of any such claims.

4.3.2 Duties of the Association. In addition to the powers delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, has the obligation to conduct all business affairs of common interest to all Owners and to perform each of the duties set forth below.

- (a) Taxes and Assessments. The Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Common Area, personal property owned by the Association or against the Association which are not separately assessed against an Owner. Such taxes and assessments may be contested or compromised by the Association provided, that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.
- (b) Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area.
- (c) Availability of Documents. The Association shall have the duty to make available to any prospective purchaser of a Unit, any Owner of a Unit, any First Mortgagee and the holders, insurers and guarantors of a First Mortgage, current copies of the Governing Documents and all other books, records and financial statements of the Association.
- (d) Utilities Suppliers. The Association shall have the duty to permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development and operation of the Project.
- (e) Maintenance of Common Area. Except as otherwise provided for herein, the Association shall have the duty to landscape, maintain and repair the Common Area, and to perform all other maintenance obligations required under this Declaration, including without limitation, the obligations set forth in Section 8.1 of this Declaration.
- (f) Insurance. The Association shall have the duty to obtain, from reputable insurance companies, and maintain the insurance described in the Article hereof entitled "Insurance."
- (g) Architectural Committee. Subject to the provisions of Section 9.3.1, the Association, through the Board, shall have the duty to appoint and remove Members of the Architectural Committee.

- (h) Valet Parking. The Association shall have the duty to provide valet parking for the parking of vehicles in the Parking Garage. Notwithstanding anything to the contrary set forth in this Declaration, this Section may not be amended without the consents required under Article 15 and the consent of a majority of the Owners who are assigned Valet Spaces. The Association may impose a fee for guest parking and for parking by an Owner of vehicles in excess of the amounts allocated under Section 3.5.2(c) of this Declaration.
- (i) Public Park Area. The Association shall have the duty to maintain and provide insurance for the Public Park Area so long as the Public Park Area is not being maintained by an assessment or maintenance district and to cooperate in the formation of and satisfaction of obligations under any assessment district formed relative to the maintenance of the Public Park Area. Such maintenance shall be performed in accordance with the requirements set forth in that certain Landscape Maintenance Agreement described in Section 2.44 herein.

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

4.5 Limitations on Authority of Board. The Board shall not take any of the actions listed below except with the vote or written consent of a majority of the Members.

4.5.1 Limit on Capital Improvements. The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for Capital Improvements to the Common Area in any fiscal year in excess of five percent (5%) of the Budgeted Gross Expenses of the Association for that fiscal year.

4.5.2 Limit on Sales of Association Property. The Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the Budgeted Gross Expenses of the Association for that fiscal year.

- 4.5.3 Limit on Compensation. The Board shall not pay compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a Member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- 4.5.4 Limit on Third Person Contracts. The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:
- (a) A management contract, the terms of which have been approved by the Federal Housing Contracts Administration or Veterans Administration;
 - (b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (c) A prepaid casualty and/or liability insurance policy not to exceed three (3) years' duration; provided that the policy permits short-rate cancellation by the insured;
 - (d) An agreement for cable television services and equipment or satellite television services or equipment of not to exceed five (5) years' duration;
 - (e) An agreement for elevator services or maintenance of not to exceed five (5) years' duration;
 - (f) Agreements for office equipment such as copiers and postage meters of not to exceed five (5) years' duration;
 - (g) An agreement for sale or lease of any security, fire, or other similar equipment, installation and services or telecommunications, data processing, fiber optics, cable or other similar services or technological evolutions of the foregoing, of not to exceed five (5) years' duration; or
 - (h) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligations upon no

more than ninety (90) days' written notice of termination to the other party.

4.6 **Personal Liability.** No member of the Board, or of any Committee of the Association, or any officer of the Association, or any manager, shall be personally liable to an Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or any Committee, if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code section 5800, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project as an Owner of no more than two (2) Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code section 5800, or any successor statute or law shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code section 5800, or any successor statute or law, have been satisfied.

ARTICLE 5 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

5.1 **Membership.**

5.1.1 **Qualifications.** Each Owner of a Unit which is subject to assessment shall be a Member of the Association. Ownership of a Unit or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in all Units in the Project ceases at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a Unit merely as security for performance of an obligation are not to be regarded as Members.

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

5.1.3 **Transfer of Membership.** The Association membership of each person or entity who owns, or owns an interest in, one or more Units shall be appurtenant to each such Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as a transfer of title to each such Unit or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title

to a Unit or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

5.2 ***Number of Votes.***

5.2.1 **Members.** Members shall be all Owners and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Notwithstanding the foregoing, the Owner of Units 1301 and 1302 which were combined by the developer prior to the date of recordation of this Declaration shall have one (1) vote and these Units shall be treated as one Unit for all purposes under this Declaration.

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

ARTICLE 6 - ASSESSMENTS AND DUES

6.1 ***Creation of Lien and Obligation for Assessments.***

6.1.1 Each Owner of a Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association all assessments which are levied pursuant to the provisions of this Declaration.

6.1.2 All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments.

6.1.3 Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when

the assessment fell due and shall bind his heirs, devisees, personal representatives and assigns.

- 6.1.4 Unlike the lien for delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by installment successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one person or entity is the Owner of a Unit, the personal obligation to pay such assessment or installment respecting such Unit shall be both joint and several.

6.2 **Funds.** The assessments collected by the Association shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration and the other Governing Documents. Upon the sale or transfer of any Unit, the Owner's interests in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.3 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners and to perform the obligations and duties of the Association, including, but not limited to the improvement and maintenance of the Common Area and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Any amounts deposited by the Association into a reserve account shall be used solely for the purpose of funding the replacement of items for which such reserves were collected, for maintaining the Project and the payment of taxes and for no other purpose, except as otherwise allowed by Applicable Law.

6.4 **Regular Assessments.**

6.4.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the Annual Budget Report for that fiscal year, which Annual Budget Report shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

6.4.2 Budgeting Assessments.

- (a) Budgetary Requirements. Regarding the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member an Annual Budget Report as described in the Article of the Bylaws entitled "Budget and Financial Statements." Increases in Regular Assessments shall be subject to the limitations set forth in Section 6.10 below.
- (b) Budgets. The Board shall annually prepare and approve the Annual Budget Report and distribute a copy thereof to each Member (or a summary thereof as provided in the Applicable Law), together with written notice of the amount of the Regular Assessment to be levied against the Owner's Unit, not less than thirty (30) nor more than ninety (90) days prior to the beginning of the fiscal year.

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

6.5 ***Special Assessments.***

6.5.1 If the Board determines that the estimated total of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the Budgeted Gross Expenses of the Association it shall become a Special Assessment. Any Special Assessments in excess of five percent (5%) of the Budgeted Gross Expenses of the Association shall be subject to the limitations set forth in Section 6.10 below.

6.5.2 The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment in one lump sum.

6.5.3 Capital Improvement Assessments and Reconstruction Assessments are Special Assessments and shall be treated in the same manner as Special Assessments.

6.6 **Capital Improvement Assessment.** In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of Subsection 4.5.1. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period of periods as the Board shall designate.

6.7 **Reconstruction Assessments.** Reconstruction Assessments may be levied by the Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

6.8 **Utility Assessments.**

6.8.1 In addition to any other Assessment levied against a Condominium, the Association may impose a Utility Assessment for any utilities that are not separately metered and charged to the Condominiums by the utility company. If any such Utility Assessment is imposed by the Association, each Owner shall be obligated to pay to the Association, or its agent, a Utility Assessment comprising the costs for the utility.

6.8.2 Anything in this Declaration to the contrary notwithstanding, the Utilities Assessment shall be separate from, and not considered a part of either Regular or Special Assessments with respect to the limitations on the increases or decreases thereof contained in this Declaration or in section 5615 of the California Civil Code or any successor statute or law. Duly levied Utility Assessments shall be subject to costs, late charges and interest for delinquent payment, and may become a lien on the Condominium, in the same manner as Regular and Special Assessments.

6.9 **Enforcement Assessments.** There are two types of Enforcement Assessments:

6.9.1 Reimbursement of Costs. The Association may levy a Reimbursement Enforcement Assessment against an Owner and Condominium whenever the Association (1) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not

been accomplished by such Owner, (2) incurs any costs to remedy the effects of the Owner's noncompliance with the Governing Documents, (3) incurs any costs which by Applicable Law or as required by the Governing Documents must be reimbursed by an Owner, and/or (4) any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. This type of Enforcement Assessment may become a lien on the Condominium, in the same manner as Regular and Special Assessments.

6.9.2 Monetary Penalties. Enforcement Assessments also include monetary penalties or fines. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and which satisfies section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose an additional Enforcement Assessment (fine) each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee comprised of only Board Members may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in this Declaration, Enforcement Assessments imposed as a monetary penalty or fine are assessments but they may not become a lien against the Owner's Unit that is enforceable by a power of sale under Civil Code sections 2924, 2924b and 2924c or any successor statute or laws. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.10 ***Limitation on Regular and Special Assessments.***

6.10.1 The Board shall levy Regular Assessments and Special Assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations and except as provided in this Section:

(a) the Board may not increase the Regular Assessments for any fiscal year unless the Board has complied with the provisions of California Civil Code section 5300 (preparation and distribution of the budget), and (b) the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year nor Special Assessments which in the aggregate exceed five percent (5%) of the Budgeted Gross Expenses of the Association for the fiscal year, without the approval of Owners casting a majority of the votes of the Members affected thereby at a meeting or election of the Association when a quorum of the Owners is established. For purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners.

6.10.2 Emergency Situation. For purposes of this Section, an Emergency shall mean any of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety in the Property is discovered, or
- (c) An extraordinary expense necessary to repair or maintain the Common Area or any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Annual Budget Report required under the Declaration and Bylaws. However, prior to the imposition or collection of an assessment under this subsection, 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 assessment. Any increases authorized by this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to the fiscal year for which an assessment is being levied. Anything in this Section to the contrary notwithstanding, the limitation on Regular Assessments and Special Assessments shall comply with the laws of the State of California at the time the Regular Assessment or Special Assessment is levied by the Association.

6.10.3 Notice to Owners. The Association shall provide notice by any manner allowed by Applicable Law to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

6.11 **Rate of Assessment.** Except as otherwise provided for herein, that portion of Regular and Special Assessments and Capital Improvements Assessments levied by the Board of the variable expenses identified on Exhibit "B" as proratable items shall be allocated by the Board based on the square footage of each Unit to the total square footage of all the Residential Units. If the actual size of a Unit is different from that shown on Exhibit "B," then the Board shall have the authority and discretion to adjust the rate of assessments to reflect such difference. All other items covered by any Regular Assessments, Special Assessments and Capital Improvement Assessments shall be fixed at a uniform rate for all Units. Enforcement Assessments shall be levied directly to the individual Units.

6.12 **Assessment Installment Due Dates.** The due dates for the payment of assessments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board in a reasonable cost of collection, including attorneys' fees, but which shall not, in any event, exceed the maximum rates permitted under California Civil Code section 5650, or any successor statute or law.

6.13 **Estoppel Certificate.** The Board on not less than ten (10) days' prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Unit under the provisions of this Declaration and further stating the dates to which installments of Assessments, Regular, Special or Capital Improvement, have been paid as to such Unit. Any such certificate may be relied on by any prospective purchaser or Mortgagee of the Unit, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer has no actual knowledge.

6.14 **Collection of Assessments; Liens.**

6.14.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the

power of sale pursuant to Section 6.14.3 enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in Section 6.15 shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, a monetary penalty (fine) imposed by the Association as a disciplinary measure for failure of a Member to comply with Governing Documents may not be characterized nor treated as an assessment which may become a lien against the Member's Unit enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to Additional Charges.

6.14.2 Creation of a Lien. If there is a delinquency in the payment of any assessment, or installment on a Unit, any amounts that are delinquent, together with the late charge described in that section, interest at the rate permitted in California Civil Code section 5650, or any successor statute or law, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Unit upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code section 5675 or any successor statute or law. The Notice of Delinquent Assessment may not be recorded unless and until the Board or its authorized representative has sent to the delinquent Owner or Owners a written notice of default and a demand for payment in accordance with Applicable Law.

6.14.3 Notice of Default; Foreclosure.

- (a) The Board or its authorized representative can record a notice of default and can cause the Units with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in California Civil Code section 5700 and any successor statutes or laws.
- (b) However, as a condition precedent to the holding of any such sale under section 2924c, appropriate publication shall be made. In connection with any sale under section 2924c, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale.

- (c) If a delinquency is cured before sale, or before completing a judicial foreclosure, the Board or its authorized representative, shall cause to be recorded in the Office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner.
- (d) On becoming delinquent in the payment of any assessments, or installments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his Unit under any lease or rental agreement to the Association regardless of possession of the Unit and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance).
- (e) The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Unit.

6.14.4 Payments Under Protest. Notwithstanding any other provisions set forth in this Section 6.14, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code section 5925 and any successor statutes or laws.

6.15 ***Additional Charges.*** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

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

6.15.2 Late Charges. A late charge in an amount to be fixed by the Board in accordance with Civil Code section 5650, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law'

- 6.15.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;
- 6.15.4 Interest. Interest to the extent permitted by Applicable Law; and
- 6.15.5 Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.16 **Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment, or installment becomes delinquent or any lien is imposed.

6.17 **Subordination of Lien to First Mortgages.** The lien of assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Unit subject to assessment, and the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Unit obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Units.

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

6.19 **Personal Liability of Owner.** No Member may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Unit owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and facilities thereof, or by abandonment of such Owner's Unit.

6.20 **Transfer of Property.** After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her Condominium prior to any such transfer.

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

6.22 **Property Exempt from Assessments.** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

6.22.1 All properties subject to any easement or other interests dedicated and accepted by the County or other local public authority and devoted to public use; and

6.22.2 All Common Area.

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

6.24 **Merger of Two Units.** Any Owner who acquires fee title to two (2) or more adjoining Units, shall be responsible for the assessments levied against each such Unit(s), except that with respect to Unit Nos. 1301 and 1302 which were combined by the developer prior to the date of recordation of this Declaration, such Owner shall pay assessments as if such Owner only owned one Unit.

ARTICLE 7 - USE RESTRICTIONS

7.1 **Residential Use.** The Units shall be used for residential purposes only; provided, however, any Units may be used incidentally for the purpose of operating a home based small business if, and only if, (a) the business is operated solely within the Units and only minimal external evidence is observable, (b) the business is limited to arts and crafts, the rendition of professional services or other similar home office activities which are merely incidental to the use of the Units as residences, (c) the business is operated by the Owner of the Units whose principal residence is the Residential Condominiums, by a tenant whose principal residence is the Units or by a member of such Owner's or tenant's family whose principal residence is the Units, (d) the operation of the business is permitted by, and is at all times in compliance with, all Applicable Laws, and (e) the operation of the business does not result in (i) the violation of any of the other provisions of the Governing Documents, (ii) any undue burden, as determined by the Board, on the Common Area, (iii) any odor, or vibration outside of the Units, (iv) employees or business invitees regularly visiting the Project or (iv) parking problems within the Project. .

7.2 **Commercial Use.** Except as otherwise provided in this Declaration, including without limitation Section 7.1 above, no part of the Project shall be used or

caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes.

7.3 Renting or Leasing of Condominiums.

- 7.3.1 An Owner shall be entitled to rent or lease an Owner's entire Condominium (but not a portion thereof) subject to the restrictions contained in this Declaration. For the purposes of this Section (including its subsections), the terms "rent" or "lease" (including their variants) shall mean any express or implied contractual relationship whereby an Owner receives compensation or any other form of consideration from a person or persons in exchange for such person's or persons' right to occupy or otherwise use an Owner's Condominium; such a contractual relationship shall be deemed to exist regardless of the familial status of the parties to each other.
- 7.3.2 Any rental or lease agreement shall be in writing, shall provide that the rental or lease agreement is subject to the Governing Documents and shall provide that any failure to comply with any provision of the Governing Documents shall be a default under the terms of the rental or lease agreement.
- 7.3.3 A copy of the Governing Documents shall be made available to each tenant or lessee by the Owner so renting or leasing. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of the Governing Documents pursuant to the occupancy and use of the Condominium.
- 7.3.4 Furthermore, no Owner may rent or lease a Condominium for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. Any rental or lease agreement pursuant to which the Owner or Owner's agent provides any services normally associated with a hotel or motel shall be deemed to be for hotel, motel or transient purposes.
- 7.3.5 Prior to the effective date of any rental or lease agreement, all Owners who rent or lease their Condominiums shall submit, in writing, names and contact numbers for their tenants and lessees to the management company for the Project.

- 7.3.6 Nothing contained herein shall limit a "Corporate Owner" from having employees or other Invitees occupy a Condominium on a rotating basis. As used herein, the term "Corporate Owner" means a corporation, partnership or limited liability company or similar form of business ownership structure.
- 7.3.7 Cap Requirement. The number of Condominiums that may be rented or leased at any one time within the Project is limited to a maximum of twenty-five percent (25% [i.e., eighty {80} Condominiums]) of the total number of Condominiums within the Project ("Cap Requirement"), which percentage shall include those Condominiums rented or leased on August 6, 2013, the date that the amendment to impose the Cap Requirement was recorded ("Cap Requirement Recordation Date"); provided, however, that those Owners who owned their Condominiums on the Cap Requirement Recordation Date may rent or lease their Condominiums without regard to the Cap Requirement for as long as they continue to own their Condominiums and without regard to whether they were renting or leasing their Condominiums on the Cap Requirement Recordation Date. Any rented or leased Condominium subject to this "grandfathering" exception shall always be included within the total number of Condominiums within the Project that are considered to be rented or leased for the purposes of determining the Cap Requirement.
- 7.3.8 Time Requirement. No rental or lease agreement shall be for a period of less than six (6) months ("Time Requirement") or for fractionalized ownership interest or time-share purposes; provided, however, that those Owners who were renting or leasing their Condominiums on February 11, 2013, the date that the amendment to the First Amended and Restated Declaration of Covenants, Conditions and Restrictions imposing the Time Requirement was recorded ("Time Requirement Recordation Date,") may rent or lease their Condominiums without the Time Requirement for as long as they continue to own their Condominiums. However, to be eligible for this "grandfathering" exception to the Time Requirement, each such Owner must have registered with the Association as an Owner who rented or leased his or her Condominium by no later than three (3) months after the Time Requirement Recordation Date. This "grandfathering" exception shall terminate as to each such Owner if and when he or she occupies his or her Condominium.

7.3.9 Change in Ownership. Any change in ownership shall terminate the “grandfathering” exception to the Cap Requirement or Time Requirement; provided, however, that the following shall not constitute such a change in ownership:

- (a) A transfer solely between husband and wife (e.g., addition of a spouse, death of a spouse, divorce settlement).
- (b) A correction of a name of an Owner holding title to a Condominium (e.g., a name change upon marriage).
- (c) A recordation to create, terminate or reconvey a lender’s interest in a Condominium.
- (d) A recordation to create, terminate or reconvey a security interest (e.g., cosigner).
- (e) A recordation to substitute a trustee of a trust, mortgage or other similar document.
- (f) A transfer resulting in the creation of a joint tenancy in which an Owner, as transferor, remains as a joint tenant (or a transfer returning a Condominium to such Owner).
- (g) A transfer of a Condominium to a (i) revocable trust that may be revoked by the Owner and is for the benefit of the Owner or Owner’s spouse; (ii) trust that may be revoked by the Owner, who is also a joint tenant, and which names the other joint tenants as beneficiaries when the Owner dies; (iii) irrevocable trust for the benefit of the Owner and/or Owner’s spouse; (iv) irrevocable trust from which a Condominium reverts to the Owner within twelve (12) years.
- (h) A transfer between parent(s) and child(ren) or from grandparent(s) to grandchild(ren).
- (i) A transfer solely between domestic partners currently registered with the California Secretary of State.

7.3.10 Hardship Exception. To meet special situations and to avoid undue hardships or practical difficulties, the Board may waive the Cap Requirement or Time Requirement and grant

permission to an Owner to rent or lease his or her Condominium to a specified tenant or lessee, for a period to be specified by the Board, and on such other terms and conditions as the Board shall establish. Such special situations, undue hardships or practical difficulties shall include, but are not necessarily limited to, an Owner's inability to sell his or her Condominium after a relocation out of the County of San Diego, an extended period in which an Owner is hospitalized or similarly confined thus causing his or her Condominium to be vacant, or a period during which court actions are involved as in divorce, probate, bankruptcy or mortgage foreclosure proceedings. Furthermore, the Board may charge an Owner a reasonable fee for processing and monitoring such permissions to rent or lease his or her Condominium. No Owner, during the period of his or her ownership of a Condominium, shall be granted a hardship exception more than twice, unless such is necessary to avoid extreme undue hardship. The determination of hardship by the Board is final and binding, and one favorable determination of hardship for an Owner shall not prejudice the right of the Board to deny such Owner's, or any other similarly-situated Owner's, subsequently-filed application for determination of hardship.

- 7.3.11 Amendment of Cap Requirement or Time Requirement By Board Vote. The Board, by a majority vote of the entire Board, shall have the power to unilaterally amend this Section 7.3 as it relates to the Cap Requirement or Time Requirement in order to comply with the requirements of the Federal Housing Administration ("FHA"), FNMA, FHLMC, GNMA or an Institutional Mortgagee. If the Board approves an amendment in such a manner and for such purposes, then the amendment shall not be recorded until a notice of such action is sent to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed amendment is required to comply with the requirements of the FHA, FNMA, FHLMC, GNMA or an Institutional Mortgagee. The proposed amendment shall be considered ratified unless the Owners entitled to cast twenty percent (20%) of the total Voting Power of the Association sign a written petition to reconsider the Board's action and deliver it to the Board within thirty (30) days after the date the notice of the proposed amendment was sent by the Board to the Owners. If such a petition is delivered, then the Board shall call a special meeting of the Members to reconsider the Board's action. At

this special meeting, unless a simple majority of the total Voting Power of the Association rejects the proposed amendment, the proposed amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

7.4 *Liability for Assessments; Rent Assignment.*

- 7.4.1 When an Owner who is leasing his or her Unit fails to pay any Regular Assessment or other Assessment or any other charge to be paid by the Owner to the Association pursuant to this Declaration for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency and hereby presently assigns to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or rental agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or rental agreement as they become due and payable, provided that the Association, at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessments due. Upon revocation of such authority, the Association may collect and retain such rental monies, whether past due and unpaid or current.
- 7.4.2 Upon request by the Board, lessee shall pay to the Association all such rent until all unpaid amounts owned by the Owner to the Association have been paid in full.
- 7.4.3 All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible. The Association's rights under this Section are in addition to and not in place of, the rights described above to file a lien and foreclose upon a lien. The Association's rights shall be subordinate to the rights of any First Mortgagee.
- 7.4.4 The Association shall only exercise its rights to collect rental monies in compliance with California Civil Code

section 2938, as amended from time to time, or any successor statute. Further, the Association shall only exercise this right after filing the lien described above and after providing the Owner with Notice and a Hearing pursuant to any Applicable Laws and the Bylaws.

7.4.5 By recordation of this Declaration, each Owner expressly consents to and is bound by this assignment of rents to the Association.

7.5 *Inapplicability to Holders of First Mortgages.* Section 7.34 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Unit who becomes the owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

7.6 *Animals.*

7.6.1 No animals, livestock, reptiles, poultry or other animals of any kind shall be kept in any Residence except that usual and ordinary domestic dogs, cats, fish and birds inside bird cages may be kept as household pets within any Residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes.

7.6.2 As used in the Declaration, “unreasonable quantities” shall ordinarily mean the following: (i) for Units that are under 1,800 square feet in size, no more than three (3) domestic pets (excluding fish) per Unit, provided that there shall be no more than one (1) dog and two (2) cats per Unit; and (ii) for Units that are 1,800 square feet or larger in size, no more than four (4) domestic pets (excluding fish) per Unit, provided that there shall be no more than two (2) dogs and two (2) cats per Unit. Notwithstanding the foregoing, the Board may determine that a reasonable number in any instance may be more.

7.6.3 A tenant or lessee shall not keep or maintain any dog within a Unit (“Dog Restriction”), which shall be applicable regardless of a Unit’s size; however, a tenant or lessee may keep or maintain other domestic pets subject to the other provisions of this Section. An Owner’s rental or lease agreement with a tenant or lessee shall incorporate the Dog Restriction and shall provide for the automatic termination of such an agreement in the event that a tenant or lessee violates the Dog Restriction. Any tenant or lessee keeping or maintaining a dog within a Unit on February 11, 2013, the date the amendment imposing the Dog Restriction was

recorded ("Dog Restriction Recordation Date") may keep or maintain his or her dog(s) during the term of such tenant's or lessee's rental or lease agreement with an Owner, but upon the death or other removal of any dog(s) from a Unit, the dog(s) shall not be replaced. To determine the dogs subject to this "grandfathering" exception to the Dog Restriction, any dog(s) within a Unit must have been registered with the Association by no later than three (3) months after the Dog Restriction Recordation Date. Any dog acquired by a tenant or lessee after the Dog Restriction Recordation Date is subject to this provision and shall not be allowed to be kept or maintained within the Project.

- 7.6.4 No animals determined in the Board's reasonable discretion to be dangerous or a nuisance may be brought onto or kept on the Project at any time. The Board shall have the right to require that any animal which, in the Board's opinion, endangers the health or security of an Owner or occupant of a Unit or creates a nuisance or unreasonable disturbance, be permanently removed from the Project upon seven (7) days' written notice. If the Owner or occupant fails to do so, then the Board may remove the animal.
- 7.6.5 The Association Rules may include restrictions regarding the entry and exit of animals through the Project and may further restrict the entry by any animal within certain areas of the Project (other than within a Unit).
- 7.6.6 No animal shall be allowed in the lobby or recreational facility areas at any time.
- 7.6.7 Furthermore, an Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by an Owner or by members of his or her family, tenants, lessees or guests.
- 7.6.8 It shall be the duty and responsibility of each Owner (or, if applicable, the members of his or her family, tenants, lessees or guests) to clean up and properly dispose of any animal's waste that has been deposited on any portion of the Property or any public street abutting or visible from the Property.
- 7.6.9 Any Owner or occupant who keeps or maintains any animal upon the Project shall be deemed to have agreed to

indemnify and hold the Association, its directors, officers and agents free and harmless from any loss, claim or liability of any kind or character arising by reason of keeping or maintaining an animal within the Project.

7.7 *Inside and Outside Installation.*

- 7.7.1 No exterior addition, change or alteration to the exterior of any Unit or any other Improvements shall be commenced without the prior written approvals required under Article 9 of this Declaration.
- 7.7.2 No structures, equipment or any alterations shall be installed or placed on the exterior of the Condominiums or within any other portion of the Unit or be allowed to penetrate or protrude into or through the unfinished surfaces of the ceilings, walls, floors or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approvals required under Article 9 of this Declaration have been obtained.
- 7.7.3 There shall be no alteration or replacement of wall covering or flooring materials which may diminish the effectiveness of the sound control engineering within the Project.
- 7.7.4 Nothing shall be done in or to any Condominium which will or may tend to impair the structural integrity of any other attached Condominium or other improvement in the Property or which would structurally alter any portion of the building except as otherwise expressly provided herein.
- 7.7.5 In addition to the foregoing, all Improvements installed or constructed by an Owner within the Project must be completed in accordance with Applicable Laws, including, but not limited to, the laws, regulations and ordinances of the City.

7.8 *Use of Common Area.*

- 7.8.1 Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:
 - (a) Affording vehicular passage and pedestrian movement within the Property, including access to the Condominiums;

- (b) Recreational use by the Owners and occupants of Condominiums in the Condominium Property and their invitees, subject to rules established by the Board;
- (c) Beautification of the Common Area and providing privacy to the residents of the Property through landscaping and such other means as the Board shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board and allowed by the Declaration; and
- (e) As Exclusive Use Common Area Easements to be used in the manner hereinafter described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an easement for Exclusive Use Common Area is appurtenant (or his or her Invitees) to enjoy the use thereof.

7.8.2 Except as otherwise provided herein, no part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or for Storage Areas), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and Improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

7.9 **No Mechanics' Liens.** No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien,

the Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

7.10 *Decorating by Owner.* Each Owner shall have the right, at his or her sole cost and expense, to maintain, repair, paint, paper, panel, plaster, and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Unit, and the surfaces of the bearing walls and partitions located within the Unit, subject to the requirements of the Governing Documents. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his Unit. All such materials shall be subject to the approval of the Architectural Committee.

7.11 *Exterior Lighting.* Any exterior electrical, gas or other artificial lighting installed on any Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Unit(s). Further rules regarding exterior lighting may be promulgated by the Board or, if appointed, Architectural Committee.

7.12 *Drainage.*

7.12.1 There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Architectural Committee.

7.12.2 Each Owner shall have the duty and obligation to maintain the drainage situated within any Exclusive Use Common Area, Patio Exclusive Use Common Area and/or Exclusive Use Balcony Common Area free of debris and any other material which may impede the flow of water and to clean such drainage, as may be necessary. If any Owner fails to maintain such drainage and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as not to impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party ("Entering Party") shall use reasonable care so as to not cause any damage to such areas. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to Section 4.3.2 of this Declaration. Notwithstanding the foregoing, the Board

and its agents shall, after giving reasonable notice, have the right to enter any deck or patio within an Exclusive Use Balcony Area and Patio Exclusive Use Common Area to conduct a cleaning of and to inspect the established system of drainage located thereon, provided that the Association repairs any damage which might result from such inspection.

7.12.3 No Owner shall dispose of any Hazardous Materials in any drains.

7.12.4 No Owner shall cause any water used to water plants by such Owner on his or her Exclusive Use Balcony Area to drop or drain onto any other Exclusive Use Balcony Area.

7.13 *Offensive Conduct; Nuisances.*

7.13.1 No illegal, noxious or offensive activities or activities which unreasonably threaten the health, safety and welfare of other residents, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Project.

7.13.2 Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of Units.

7.13.3 Unless otherwise permitted by the Association Rules, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's Unit and except within the Exclusive Use Common Area appurtenant to such Owner's Condominium or Common Area designated for such purpose by the Association, if any, subject to the provisions of the Association Rules.

7.14 ***Noise and Vibration.*** No person shall produce, or allow to be produced, noise or building shaking vibration at such levels as will be offensive to other residents.

7.15 ***Outside Drying and Laundering.*** No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Project and there shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Common Area.

7.16 ***Toxic or Noxious Matter.*** No person shall discharge into the Project's sewer system, storm drain any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any Applicable Law, subject any Owner to liability under state and federal law for any clean-up or cause injury or damage to neighboring property or business elsewhere on the Project.

7.17 **Odorous Matter.** No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which such odor was generated.

7.18 **Air Pollution.** No air pollution or contaminates sufficient to create a nuisance shall be discharged; and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the emission or contaminates, and such controls are applied by the Board.

7.19 **Use of Exclusive Use Areas.** Improvements including, without limitation, plants, fountains and other landscaping features within the Patio Exclusive Use Areas or Exclusive Use Balcony Areas shall be subject to the Association Rules and the Architectural Guidelines and any Improvements within such areas shall require the approval of the Architectural Committee. Unless installed at original development, no vegetation shall be permitted to extend beyond the railings, fences, walls and/or other boundaries of the Exclusive Use Balcony Common Area or Patio Exclusive Use Area, except as approved by the Architectural Committee. No Owner shall change or alter the surface of any Patio Exclusive Use Area or Exclusive Use Balcony Common Area without the consent of the Architectural Committee.

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

7.21 **Parking Spaces.** The Owner of a Condominium may assign other Owners in the Project the non-exclusive right to use any Parking Space assigned to an Owner, subject to all the requirements of this Declaration and the Association Rules, as such documents may be amended from time-to-time, provided that the conveyance of fee title to the Condominium by an Owner shall terminate the assignment of such parking rights.

7.22 **Signs.**

7.22.1 No signs shall be erected or maintained within any Unit if they are visible from outside the Unit except as allowed by Applicable Law and the Association Rules without the prior written consent of the Board.

7.22.2 No sign shall be placed by an Owner within any portion of the Common Area without the prior consent of the Board. Each Owner, by acceptance of a deed, acknowledges that the Common Area is a private right of way for the benefit of the Project and that the Association as a private entity established to operate, manage and govern the Project, has

the authority to regulate or limit the display of such signs pursuant to the provisions of section 713 of the California Civil Code.

- 7.22.3 Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the City of County in which the Property is located or to restrict any signage rights that may be accorded to the Owners by applicable law.

7.23 Structural Alterations. Except as permitted under Section 9.6 of the Declaration, no structural alterations to the interior of or Common Area surrounding any Unit shall be made and no plumbing or electrical repair or modifications within any bearing or common walls shall be performed by any Owner without the prior written consent of the Architectural Committee. An Owner who acquires fee title to two (2) adjoining Units may be permitted to remove the demising wall dividing the two (2) Units, so long as the Owner has complied with the requirements and obtained the approval of the Architectural Committee.

7.24 Compliance with Laws, Etc. Nothing shall be done or kept in any Unit or in the Common Area that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done or kept in his or her Unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials. No Owner shall allow furniture, furnishings, or other personal belonging to such Owner to remain within any portion of the Common Area except portions subject to Exclusive Use Easements appurtenant to such Owner's Condominium and except as may otherwise be permitted by the Board or the Association Rules.

7.25 Window Coverings. No window in any Unit shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, or covering, or any other material reasonably deemed by the Architectural Committee to be inappropriate for such use; provided, however, that an Owner may use plain white, bronze, cream or black sheets to cover windows for a period of time not to exceed three (3) months after close of escrow for the sale of that Owner's Unit pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. All draperies and window coverings which face the exterior of the Building shall be white or as otherwise permitted under the Architectural Control provisions.

7.26 Time Sharing. A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods among unrelated or unaffiliated occupants. The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Unit or Units or any portion thereof in the Project rotates among various

unrelated persons, 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 one hundred eighty (180) consecutive calendar days or less. Nothing contained herein shall restrict an Owner from leasing his or her Unit pursuant to Section 7.3 above or from using a Unit to house employees or invitees of a Corporate Owner on a rotating basis.

7.27 Antennae.

- 7.27.1 No radio station, satellite or shortwave operators of any kind shall operate from any Unit or any other portion of the Property unless approved by the Architectural Committee.
- 7.27.2 Exterior antennas and satellite dishes, not exceeding one meter (39.37") in diameter, are permitted, but only in strict compliance with Applicable Laws and not on any portion of the Common Area. Except as permitted by Applicable Law, there shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained in the Property for any purpose whatsoever without the prior written consent of the Board. The Board may adopt Rules restricting the construction, installation, maintenance or replacement of any such equipment as long as such restrictions do not conflict with Applicable Law.
- 7.27.3 All satellite dishes approved by the Architectural Committee for installation on the Project shall be black. Normal radio, stereo, high fidelity and television equipment installation within a Unit are excepted from the provisions of this Section; provided, however, in no event shall such radio, stereo, high fidelity, television equipment, or other electrical equipment interfere with the use of any such equipment by any other Owner within the Project.

7.28 Barbeques and Exterior Fires. There shall be no exterior fires whatsoever, except for the Common Area fire pit and gas barbeque grills (no charcoal grills of any type may be used) contained within receptacles therefor in designated locations within the Common Area or on balconies or terraces, arranged in such a manner that they do not create a fire hazard or otherwise create a nuisance or become offensive to occupants of other Units. If Applicable Laws allow barbeques to be located on any balcony or terrace, any barbeque shall be black or stainless steel in color, unless another color is approved by the Architectural Committee. All maintenance and cleaning of barbeques shall only be performed inside the Units.

7.29 Firearms and Fireworks. The display and discharge of firearms or fireworks in the Common Area, including the Exclusive Use Common Areas, is

prohibited; provided that the display of lawful firearms in the Common Area is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Area to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

7.30 *Garbage/Trash.*

- 7.30.1 No garbage, trash, rubbish, recyclables or other waste material shall be kept or permitted on the Project except in garbage cans, trash containers, trash chutes, or other waste or recyclable receptacles located on the Project provided for the use of all Owners.
- 7.30.2 All trash must be bagged or otherwise sealed before using any trash chute located in the Project. No odor shall emanate therefrom so as to be unreasonably unsanitary, unsightly, offensive or detrimental to the Owners in the Project.
- 7.30.3 Under no circumstances may explosives, fireworks, or highly flammable or hazardous materials such as gasoline, kerosene, oil, oil-based paints, or solvents, be disposed of in the trash chutes or anywhere else in the Project. Any and all costs incurred by the Association for the removal of combustible or toxic materials from the trash chutes shall be borne by the offending Owner at such Owner's sole cost and expense.

7.31 *Submission of Design Approach and Laboratory Impact Isolation Tests for Initial and Replacement Hard Surface Floors.*

- 7.31.1 The Owner of any Unit wishing to install a hard surface floor must submit to the Architectural Committee any information required by the Architectural Guidelines, which must include the following:
 - (a) A construction drawing clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate against impact noises such as footfalls. The drawing must clearly identify all materials, their composition and thickness.
 - (b) A plan view drawing of the hard surface flooring area indicating the location of all adjacent partitions, cabinets, etc., with referenced details indicating the method of isolating the hard surface flooring along the entire perimeter.

- (c) A test report from a qualified acoustical testing laboratory clearly showing that the Impact Isolation Class of the construction selected has a minimum rating of IIC052. In the Architectural Guidelines the Board may establish a different IIC rating to accommodate any different types of construction or other factors that may impact the noise transmission in any portion of the Project. If such Architectural Guidelines are adopted by the Board, those specific provisions of the Architectural Guidelines will prevail in any inconsistency with this Subsection 7.31.3.
- (d) A copy of the installation instructions from the resilient floor underlayment manufacturer.
- (e) The name, qualifications, and experience of the contractor who will install the hard surface flooring and resilient underlayment with a listing of his experience in the installation of floors utilizing impact insulation materials.
- (f) The proposed individual(s) who will oversee the installation in order to verify that the installation is in accordance with the manufacturer's requirements.

7.31.2 No construction shall be permitted until the information required by the Architectural Guidelines is submitted to and approved by the Architectural Committee unless the Architectural Committee determines in their prudent judgment that the requirement should be waived. Submission of these materials to the Architectural Committee shall be for the purpose of documenting the location and design of any hard surface flooring within the Project and to insure that such flooring is installed in a professional manner and with reference to appropriate standards.

7.31.3 Installation of any hard surface flooring without compliance with each of the requirements set forth in 7.31.1 above and any the Architectural Guidelines, shall constitute a violation of this Declaration, and subject the violating Owner to all remedies provided herein or by applicable law for such violation, including, without limitation, the levy of fines by the Association until such violation is removed from the Unit.

7.31.4 In addition, and notwithstanding any Owner's compliance with the requirements of 7.31.1 above, if, following

installation of any such hard surface floor, the Owner of the Unit located beneath such installation lodges a complaint with the Board concerning the sound impact of such flooring on the complaining Owner's Unit, an investigation by Association management and all parties shall take place and if determined appropriate the necessary actions to mitigate sound transfer by means of floor covering modifications and/or noise avoidance will be requested. If the complaint persists and cannot be resolved by the affected Owners, the Board can require an on-site test to measure the IIC (Field Impact Insulation Class rating). If the Board requires the test, the Owner with the hard surface flooring system shall arrange for and pay the full cost of the on-site test to be performed by a testing agency/consultant accredited through the National Voluntary Accreditation Program in accordance with ASTM standards and approved by the Board of Directors.

- (a) If test results indicate compliance of an IIC of 50 or better standard is met, the complainant shall pay the cost of the test and no modification will be required.
- (b) If the test results fail to meet the IIC of 50 or better standard then the Board may require the replacement of the flooring at the installing Owner's expense in order to meet the noise control standards or request the installing Owner to cover at least eighty percent (80%) of the hard surface flooring within such Owner's Unit with carpeting in order to mitigate the impact to the complaining Owner, and the failure of the Owner notified by the Board to comply with the Board's requirement within sixty (60) days after receipt of that notice shall constitute a violation of this Declaration and subject the violating Owner to all remedies provided by this Declaration of applicable law.

7.32 View Obstructions.

- 7.32.1 No vegetation or other obstruction shall be planted or maintained by an Owner or resident in such location or of such height as to unreasonably obstruct the view from any other Unit in the vicinity thereof.
- 7.32.2 If there is a dispute between Owners concerning the obstruction of a view from a Unit, the dispute shall be submitted to the Board, whose decision in such matters shall

be binding. Any such obstruction shall, upon request of the Board, be removed or otherwise altered to the satisfaction of the Board, by the Owner of the Unit, upon which the obstruction is located.

7.32.3 The Board shall ensure that the vegetation in the Common Area maintained by the Association is cut frequently, so that the view of any Owner is not unreasonably obstructed.

7.32.4 Each Owner, by accepting title to a Condominium, hereby acknowledges that (a) there are no protected views within the Property, and no Condominium is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by the Association or other Owners may impair the view from any Condominium, and the Owners hereby consent to such view impairment.

7.33 **Water Supply System.** No individual water supply or water softener system shall be permitted in any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendation of any applicable water district, the locality in which the Property is located, and all other applicable governmental authorities.

7.34 **Yard Sales, Estates Sales, and Swap Meets.** Yard sales, garage sales, estate sales, swap meetings, flea markets, or similar activities are prohibited unless approved in writing by the Board prior to the event.

7.35 **Sound Attenuation.** In any multi-family dwelling, sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low. Each Owner shall endeavor to minimize any noise transmission from his or her Unit, and shall adhere to any of the rules and regulations set forth in the Association Rules which are designed to minimize noise transmission. To minimize the noise transmission from a Unit, each Owner shall adhere to the following:

7.35.1 No holes or other penetrations shall be made in demising walls (party walls) without the permission of the Architectural Committee. No penetrations of any sort shall be made in the ceiling of any Unit. Acoustical sealant shall be packed around the point of penetration of all pictures and other items hung from the wall that require nailing or screwing.

7.35.2 To maximize the sound insulation capabilities of each Unit, there shall be no hard surface or wood flooring installed in any Unit other than that installed in connection with initial construction of the Unit or that complies with the provisions of

this Declaration, including, without limitation, the requirements set forth in Section 7.31 and the Architectural Guidelines.

- 7.35.3 No modifications shall be made to any Unit which would result in a reduction in the minimum impact insulation class of the Unit.
- 7.35.4 Loudspeakers for music reproduction and television shall not be supported from or contact demising walls and shall be elevated from the floor by a proper acoustic platform.
- 7.35.5 Pianos shall have at least ½ inch neoprene pads under the supports to minimize vibration transmission into the structure.
- 7.35.6 All furniture shall contain rubber casters or felt pads.

7.36 Roof: Access Restrictions. Owners and Invitees shall not at any time or for any reason whatsoever enter upon or attempt to enter upon (i) the roof of the Project; (ii) any portion of the Common Area used by the Association for management, administrative, or security purposes; and (iii) utility closets and rooms, without the prior approval of the Board.

7.37 Vibrations. No Owner shall attach to the walls or ceilings of any Unit any fixtures or equipment which will cause vibrations or noise or unreasonable annoyance to the Owners of the other Units or to the Common Area.

7.38 Storage Areas. Storage Areas shall be used only for the storage of personal property. In no event shall the Storage Areas be used for the storage of any Hazardous Materials or any other noxious, toxic, or odorous substances. Exclusive Use Parking Spaces may only be used for vehicular parking. When wall space is available Owners may use Board approved hooks to hang items on the wall. These items can not extend into adjacent parking spaces and at no time create a hazard or safety issue for residents and staff. No items may be left on the floor of the garage or on vents.

7.39 Concrete Slabs. Notwithstanding anything contained herein to the contrary, no Owner shall drill, penetrate or otherwise tamper with the concrete or other structural components of the Project ("Concrete Slab"), including the Exclusive Use Balcony Areas, Exclusive Use Roof Deck Common Areas and Exclusive Use Patio Areas. Any penetration or tampering will cause structural damage to such areas and may result in personal injury. By accepting a grant deed to a Condominium in the Project, each Owner specifically covenants and agrees that (1) such Owner shall not cut into or otherwise tamper with the Concrete Slab; (2) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns an interest in the Condominium; (3) such Owner shall disclose the existence of the Concrete Slab to any tenant, lessee or subsequent purchaser of the Condominium; and (4) such Owner shall indemnify, protect, defend and hold Association and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

7.40 **Indemnification.** Each Owner shall be liable to the remaining Owners for any damages to the Common Area that may be sustained by reason of the negligence of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his deed, agrees for himself and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner and within any Exclusive Use Common Area appurtenant to the Owner's Unit, unless the injury or damage occurred by reason of the negligence of any other Owner.

7.41 **Power Equipment.** No one may set up a hobby shop for commercial purposes, except upon the written consent of the Board. Use of power equipment may be subject to reasonable Rules as to the time and duration of use and the level of noise.

7.42 **Protection Systems.** No one may disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to fire sprinklers and fire alarm devices.

7.43 **Flammable Substances.** No one may store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Unit, provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.

7.44 **Harassment.** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, employees, Board members and/or vendors working in the Project. No person shall attempt to engage Association or management representatives or vendors on any private business of such person, or to otherwise direct, supervise or in any manner attempt to assert control over such Association or management representative or vendor during the hours that such Association or management representative or vendor is working on behalf of the Association.

7.45 **Drones**

7.45.1 A "drone" is defined as an unmanned motorized aircraft without a human pilot on board, including model airplanes, helicopters and similar aircraft. The Board may adopt Rules to revise or expand this definition to address any type of aircraft.

7.45.2 The Board may establish Rules to prohibit or regulate the operation of any drones in the Project.

7.45.3 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Project in such a way as to invade the privacy or safety of Association members, guests, residents or vendors, whether equipped with a camera or otherwise.

7.45.4 No resident, guest or invitee may operate or authorize the operation of a drone in the airspace above any portion of the Common Area.

7.46 *Electric Vehicle Charging Stations.* [Civ. Code § 4745]

7.46.1 No electric vehicle charging station shall be installed by any person in any part of the Project without the prior written approval of the Board.

7.46.2 All electric vehicle charging stations shall be installed, maintained, repaired, replaced and removed in strict accordance with all Association Rules and Applicable Law.

7.46.3 Owners who install an electric vehicle charging station shall be solely responsible for all costs associated with the installation, existence, use, maintenance, repair, replacement and removal of the station, as well as any damage caused to any other property as a result of the installation, use, existence, maintenance, repair, replacement or removal of that station.

7.46.4 The applicable Owners shall maintain an umbrella liability coverage policy in the amount of \$1 million covering the obligations of the Owner for the station unless the station is an existing National Electrical Manufacturers Association standard alternating current power plug. The Association shall be named as an additional insured under this policy with a right to notice of cancellation.

7.46.5 When an Owner who has an Electric Vehicle Charging Station transfers title to the Unit to an unrelated third party purchaser, the Electric Vehicle Charging Station shall revert back to the Association to be resold to the new Owner or another Owner as determined by the Board.

ARTICLE 8 - REPAIR AND MAINTENANCE

8.1 *General; Standards of Maintenance.* [Civ. Code § 4775] The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article “maintenance” shall include, without limitation, painting, weatherproofing and cleaning to keep Improvements in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Property and protect the values thereof. The Board shall have the power to determine the standards of such maintenance. The replacement of exterior items by Owners shall be subject to the architectural review requirements of the Governing Documents.

8.2 Division of Responsibility. Attached hereto as Exhibit "C," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Property.

- 8.2.1 Generally, each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Property which are used exclusively by that Owner, and the Association shall be responsible for the maintenance, repair and replacement of any other area of the Common Area.
- 8.2.2 In the event of any inconsistency between the above general provisions and the specific provisions of Exhibit "C," the provisions of Exhibit "C" shall prevail. In the event of any inconsistency among the provisions of Exhibit "C," the most specific provision shall prevail. Provided any item is not listed in Exhibit "C," the responsibility for its maintenance shall be determined in accordance with the above general provisions or as otherwise provided by statute or Applicable Law.
- 8.2.3 Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.
- 8.2.4 No Owner shall have a claim against the Association if the Owner performs or pays for any work ordinarily the responsibility of the Association unless the Board agrees in advance that the Owner may perform the work and receive reimbursement from the Association.

8.3 Owner Improvements. Each Owner shall be responsible for the maintenance, repair, and replacement of any Improvements installed or planted by the Owner, any resident in the Owner's Unit, or the Owner's predecessor in interest, within the Unit, the Exclusive Use Common Areas, or upon the Common Area. The Owner is also responsible for damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any Improvement within the Common Area is subject to the architectural review provisions. Any unauthorized Improvement in the Common Area shall be considered a trespass on the Common Area and shall give the Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it.

8.4 Damage Caused by Owner. [Civ. Code § 5725]

- 8.4.1 Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such

Owner's Invitees, pets or other person or entity deriving any interest through such Owner, the cost of all repairs shall be borne solely by the responsible Owner.

- 8.4.2 The Association shall be responsible for performing the repair of any damage to the Common Area or Improvements over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her Unit for which such Owner has control. The Owner of any other Unit which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.
- 8.4.3 If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other Unit which sustained damage, the Association, after Notice and Hearing, may charge the cost of those repairs to such Owner as an Individual Assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.
- 8.4.4 All repairs performed to correct any damage shall be sufficient to return the damaged property to its condition prior to the damage, with upgrades as may be required to conform to any applicable building codes in effect at the time the damage is repaired.
- 8.4.5 Notwithstanding anything to the contrary set forth in this Declaration, any tile or surfacing shall not interfere with or block the drainage from any window system weep-holes.

8.5 ***Failure to Maintain.*** In the event an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board may cause

such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration. Notwithstanding this provision, the failure of the Board to act under this Section shall not relieve the Owner of any liability resulting from such failure to maintain.

8.6 Vacating Unit; Costs.

- 8.6.1 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The Owner shall provide the Association access as needed for maintenance or repair work by the Association.
- 8.6.2 The costs of any temporary relocation during such maintenance or repair work shall be paid by the Unit Owner affected unless another Owner is responsible for the damages pursuant to the Governing Documents. The Association shall have no liability for any loss of rental income. If another Owner is responsible for the damages, the responsible Owner shall pay the relocation costs.
- 8.6.3 Except in case of emergency, the Association shall give notice of the need to temporarily vacate a Unit to the Owners and occupants not less than fifteen (15) days or more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

8.7 Limitation of Liability. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

8.8 Damages to Unit; Water Intrusion Damage.

- 8.8.1 Each Owner shall be solely responsible for the repair of any damage to any and all of his or her personal property and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or Improvement or any other component or Improvement maintained by the Association, including water intrusion from

any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged Improvements for which such Owner is responsible.

- 8.8.2 The Association shall not be liable for damage to personal property in the Property resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.
- 8.8.3 Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Unit immediately upon discovery of such leak or water intrusion. Within twenty-four (24) hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Unit damaged components removed or remediated. If Owner has not had water extraction and cleaning performed within forty-eight (48) hours of discovery of the leak or water intrusion, the Association may cause such work to be done and assess the cost of the work to the Owner as an Individual Assessment.
- 8.8.4 The Association is authorized to enter any Unit to perform water extraction and related repairs on an emergency basis.
- 8.8.5 If repairs are required to a Unit following a leak or water intrusion, Owner shall cause all work to be performed by a licensed contractor experienced in water damage and mold remediation. Containment procedures designed to prevent contamination of the affected Units, other Units and the Common Areas shall be utilized. If the Owner or occupants are required to vacate the Unit during the remediation, Section 8.6 shall apply.
- 8.8.6 Owner and his or her Invitees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Unit unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

8.9 Owner Notification to the Association. If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area or in any Unit, including, but not limited to, water entry, water damage or mold, that may

constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Project, the Owner shall notify the Association representatives of the condition as soon as possible.

8.10 Termite Control. [Civ. Code § 4780] The responsibility for control of wood destroying pests or organisms shall be as follows:

- 8.10.1 The party responsible for the maintenance and repair of a component shall control the presence of or repair damage caused by wood-destroying pests or organisms in that component.
- 8.10.2 The Board shall determine the method and timing of any treatment for which it is responsible in its sole discretion.
- 8.10.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for effective treatment of such pests or organisms pursuant to Section 8.6.
- 8.10.4 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent gross negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 8.10.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the Owner shall be solely responsible for any and all costs associated with obtaining the certificate, including, without limitation, the costs of maintenance and repair of the Unit, Exclusive Use Common Area, or Common Area which may be necessary to obtain the termite clearance certificate. An Owner or group of Owners may agree, in a signed writing delivered to the Association, with such reasonable assurances as the Board may request, to share the above costs.

8.11 Damage or Destruction. The Owner of a Unit damaged or destroyed by fire or other calamity shall cause the interior of such Unit to be repaired or restored at the expense of the Owner. This obligation shall not extend to the installation of furniture and the like, but is for the purpose of preventing unsightliness, with respect to such damaged Unit and any resultant health or safety problems to other Owners or the public. Nothing herein shall be construed, in any manner whatsoever, to alter or modify the obligation of the Association to repair or restore the Project as provided in the Article hereof entitled "Destruction of Improvements and Condemnation."

8.12 *Inspection Obligations.*

- 8.12.1 Contract for Services. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations set forth in Section 4.4 of this Declaration) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Project.
- 8.12.2 Inspection Responsibilities. The inspectors shall inspect component parts of the Project, including, but not limited to, structural components, parking areas, driveways and walkways and landscaping. If any of the contractors or subcontractors responsible for constructing any component part of the Project provide the Association with maintenance criteria, maintenance manuals, or warranty requirements, such inspectors shall additionally assist the Association with compliance of same. The Association shall update such manuals on a regular basis. The Association shall be responsible for meeting all requirements under such maintenance manuals, maintenance criteria, or warranty requirements.
- 8.12.3 Schedule of Inspections. Such inspections shall take place at least annually. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

ARTICLE 9 - ARCHITECTURAL COMMITTEE

9.1 *Architectural Committee Approval.* Each Owner shall obtain the approval of the Architectural Committee for any Improvements in accordance with the provisions set forth below.

9.2 **Organization.** There shall be an Architectural Committee consisting of at least three (3) persons. There shall also be one (1) alternate member who may be designated by the Architectural Committee to act as a substitute on the Architectural Committee in the event of absence or disability of any member.

9.3 **Designation of Members and Terms of Office.**

9.3.1 Appointment and Removal. The right to appoint and remove the members of the Architectural Committee shall be vested solely in the Board. Members of the Architectural Committee appointed by the Board shall be Members of the Association. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the minutes of the Association of each new Architectural Committee member or alternate member appointed and each member or alternate replaced or removed from the Architectural Committee. In the event that no members of the Architectural Committee have been appointed by the Board, the Secretary of the Association shall serve as chairperson of the Architectural Committee and shall have the power to appoint the other members.

9.3.2 Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to the Board, which then has the right to appoint a replacement Architectural Committee member.

9.3.3 Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Board.

9.4 **Duties.** The Architectural Committee shall consider and act upon such proposals or plans submitted to it pursuant to the terms of this Article 9. In making its decisions hereunder, the Architectural Committee shall, among other matters, consider the following: (a) whether the proposed Improvements will impair the structural integrity of the Project, or (b) whether the proposed Improvements will adversely impact or increase the costs of operating the heating, ventilating and air conditioning system or the plumbing, electrical or mechanical systems, or (c) whether the proposed Improvements will adversely impact the sound insulation or sound transmissions within the Project.

9.5 **Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The act or consent of any two (2) members of the Architectural Committee shall constitute an act by the Architectural Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Association shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

9.6 ***Scope of Architectural Review.***

- 9.6.1 To the extent that an Owner is entitled under this Declaration to modify his or her Unit in any manner following review and approval by the Architectural Committee, no Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Unit or any Exclusive Use Common Area until the location and the complete plans and specification showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing by the Architectural Committee and the Board.
- 9.6.2 So long as the removal of a demising wall or floor between two (2) adjoining Units which are owned by one (1) Owner does not adversely impact the structural integrity or utility of the Project, and the plans and specifications are otherwise in conformance with the requirements of this Declaration and the Architectural Guidelines, approval may be granted by the Architectural Committee.

9.7 ***Architectural Guidelines.*** The Board may, from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, finishes and materials and similar features which are recommended for use in the Project, provided however, that said rules shall not be in derogation of the standards required by this Declaration.

9.8 ***Approval of Plans and Specifications by Architectural Committee.***

- 9.8.1 Preliminary Approval. Any Owner proposing to construct Improvements or taking other actions requiring the prior approval of the Architectural Committee pursuant to this Declaration shall first apply to the Architectural Committee for preliminary approval by submission of preliminary drawings of the proposed Improvements in accordance with the Architectural Guidelines, if any. The purpose of the preliminary approval procedure is to allow an Owner proposing to construct Improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as set forth below.

- (a) Time Periods for Review. Within thirty (30) days after proper application for preliminary approval, the Architectural Committee shall consider and act upon such request. The Architectural Committee shall grant such preliminary approval only if the proposed Improvements, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application and so long as such preliminary approval has been ratified by the Board. In the event the Architectural Committee fails to approve or disapprove any such preliminary plans within thirty (30) days after all documents and information requested by the Architectural Committee have been received by it, the Owner requesting said approval may submit a written notice to the Architectural Committee and the Board advising the same of its failure to act. If the Architectural Committee and the Board fail to approve or disapprove any such preliminary plans within fifteen (15) days after the receipt of said notice from such Owner, said preliminary plans shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project in granting or denying approval, the Architectural Committee, acting on behalf of the Board, may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant. The giving of any preliminary approval shall not affect the right of the Architectural Committee or the Board to deny approval of any final Plans and Specifications even if they are in substantial conformance with the approved preliminary Plans and Specifications.
- (b) Effectiveness of Approval. Any preliminary approval granted by the Architectural Committee as provided above shall be effective for a period of ninety (90) days from the date of the issuance thereof. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

9.8.2 Final Approval. Any application for final approval which consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration and the Architectural Guidelines, shall be approved by the Architectural Committee as set forth below.

- (a) Time Periods for Review. Within thirty (30) days after submission of a complete application for final approval, the Architectural Committee shall consider and act upon such application. Any actions to be taken by the Architectural Committee shall be approved by the Board. In the event the Architectural Committee fails to approve or disapprove any such final plans within thirty (30) days after all documents and information requested by the Architectural Committee have been received by it, the Owner requesting said approval may submit a written notice to the Architectural Committee and the Board advising the same of its failure to act. If the Architectural Committee and the Board fails to approve or disapprove any such final plans within thirty (30) days after the receipt of said notice from such Owner, said final plans shall be deemed approved, provided that the proposed Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Project.

9.9 **Appeal.** In the event that the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant.

9.10 **Inspection and Correction of Work.** Inspection of work and correction of defects therein shall proceed as follows:

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

- 9.10.2 Notice of Completion. Upon the completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Architectural Committee.
- 9.10.3 Inspection. Within ninety (90) days after delivery of a notice of completion pursuant to Section 9.10.2, the Architectural Committee, or its duly authorized representative, shall have the right to enter into a Unit, as provided in Subsection 9.10.1 above, to inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved Plans and Specifications. If the Association finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such noncompliance within such ninety (90) day period, specifying particulars of noncompliance and shall require the Owner to remedy such noncompliance.
- 9.10.4 Noncompliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner Notice and Hearing, the Board shall determine whether there is a noncompliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion may grant, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Reimbursement Enforcement Assessment against such Owner for reimbursement.
- 9.10.5 Government Regulations. In the event there is any conflict between the requirements or actions of the Architectural Committee and the mandatory regulations or ordinances of any governmental entity relating to the Property, the government

regulation or ordinances, to the event that such regulations and ordinances are more restrictive, shall control and the Architectural Committee shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental codes or regulations are less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Architectural Committee of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with an Applicable Law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements"); provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

9.11 Diligence in Construction. Upon final approval of any Plans and Specifications, the Owner shall promptly commence construction within sixty (60) days and diligently pursue the same to completion and complete such construction within six (6) months of the commencement of construction unless a longer time is authorized in writing by the Architectural Committee.

9.12 Fee for Review. The Architectural Committee shall have the right to establish a reasonable fee approved by the Board for the review and approval of Plans and Specifications which must be submitted to the Architectural Committee pursuant to the provisions of this Article. The Architectural Committee may also require an Owner to pay any fees, costs or expenses associated with the review and approval of the Owner's Plans and Specifications by an outside consultant or any costs associated with the review of the Plans and Specifications by any architect retained by the Board.

9.13 Compensation. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member may be approved by the Board. The Architectural Committee shall have the right to hire any engineer or other consultant, the opinion of which the Architectural Committee deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

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

9.15 **Waiver.** The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.16 **Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to reply on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

9.17 **Liability.** Neither the Architectural Committee, Association management nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Project of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 9.16, whether or not the facts therein are correct; provided, however, that such Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

9.18 **Government Requirements.** The application to and the review and approval by the Architectural Committee of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

9.19 **Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structure or Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be signed by at least two (2) members of

the Architectural Committee, and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Unit, including, but not limited to, zoning ordinances and lot setback, lines or requirements imposed by the City or any other governmental authority.

ARTICLE 10 - INSURANCE

10.1 ***Liability Insurance.*** The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any manager, employee, and the Owners and occupants of Condominiums, and their Invitees against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

10.2 ***Property Insurance.*** The Association shall keep (i) any Improvements within the Common Area to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies) and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Common Area (excluding Units) and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction to the Common Area, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

10.2.1 Description of Policy Coverages. The policy shall cover the following real and personal property:

- (a) Common Area: All Improvements within the Common Area to be maintained by the Association, including buildings and any additions or extensions thereof; all fixtures, machinery and equipment permanently affixed to the building and not located within a Unit; fences; monuments; lighting fixtures; exterior signs, personal

property owned or maintained by the Association; and recreational facilities; but excluding land, foundations excavations, and other items typically excluded from property insurance coverage; and

(b) Landscaping. Lawn, trees, shrubs and plants located in the Common Area.

10.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a “special form” policy or its equivalent.

10.2.3 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

10.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

10.2.5 Waiver of Subrogation. Except as provided in Section 7.540 of this Declaration, the Association waives all rights of subrogation between the Association and any Owner and any Owner’s Invitees. All insurance policies obtained by the Association shall include a waiver of subrogation rights against any Owner and their Invitees; provided that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Association and any Owner and the Owner’s Invitees set forth herein. Insurance proceeds for Improvements in the Common Area and personally owned by the Association shall be payable to the Association.

10.2.6 Additional Insureds. The policies shall name as insured the Association and its employees, the Owners, the management company of the Association, if requested by the Association, and all Mortgagees as their respective interest may appear, and may contain a loss payable endorsement in favor of the Trustee (as defined below).

10.3 Individual Insurance. Each Owner shall maintain property insurance against losses to the Owner’s real or personal property, including original construction and any upgrades or Improvements, and the cost of repair or replacement of damaged items, including, but not limited to, any Improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which the Owner is responsible for maintenance, repair and replacement by the terms of this Declaration. Such property insurance shall

include additional living expense coverage and liability insurance against any liability resulting from any injury or damage occurring within the Unit. Such insurance shall also include coverage against any damage caused by an Owner or the Owner's Invitees, (including but not limited to damages caused through negligence or failing to fulfill the maintenance obligations set forth in the Governing Documents) to another Owner's Unit or Common Area. The Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Association, and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between any Owner and the Association set forth herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described above. If an Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a Reimbursement Enforcement Assessment against the Owner's Condominium to collect the amount of the diminution.

10.4 Fidelity Bond. The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Units plus reserve funds of the annual assessment naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

10.5 Worker's Compensation Insurance. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all Applicable Laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

10.6 Other Insurance. The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

10.7 Copies of Policies. Copies of all such insurance policies certificates (showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, and Board. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

10.8 *Review of Insurance.* The Board shall review the adequacy of all Association insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent Owners of similar property in the area in which the Project is situated.

10.9 *Board's Authority to Revise Insurance Coverage.* Subject to the provisions of Section 10.1 and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this Article 10 in any manner that the Board, in its reasonable business discretion, considers to be in the best interest of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article 10, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, audit directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at the 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.

10.10 *Trustee.* All insurance proceeds payable under Sections 10.2 and 10.3, subject to the rights of Mortgagees under Article 13, may be paid to a trustee (the "Trustee"), to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank in the County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

10.11 *Directors and Officers Liability Insurance.* [Civ. Code § 5800] The Association shall obtain and maintain one (1) or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors or at the direction of Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion. If the minimum amount necessary to comply with Civil Code section 5800 or any successor statute is a larger amount, the statute shall control.

10.12 *Owner's Insurance.* An Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any Institutional Mortgagee. The Association may provide Owners the contact information for another Owner's insurance company in the event of damage claims between Unit Owners.

10.13 **Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Section 10.1 and 10.2. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

10.14 **Distribution to Mortgagees.** Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Condominium as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

10.15 **Compliance with Federal Regulations.** Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Condominium Projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of the above is a Mortgagee or an Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

ARTICLE 11 - DESTRUCTION OF IMPROVEMENT AND CONDEMNATION

11.1 **Destruction of Improvements.**

11.1.1 **Restoration Defined.** As used in this Article 11, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Common Area to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

11.1.2 **Insured Casualty.** If the Common Area is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing Applicable Laws, restore the Common Area to the same condition as it was in immediately prior to the destruction. If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of Section 11.1.6.

11.1.3 **Sufficient Proceeds.** The costs of restoration of damaged Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the

insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Common Area, the Board shall then add to the insurance proceeds all Reserve Account funds designated for the repair or replacement of the portions of the Common Area which have been damaged. If the total funds then available are sufficient to restore the damaged Common Area, the damaged Common Area shall be restored. If the aggregate amount of insurance proceeds and such Reserve Account funds are still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration. If the total funds then available are sufficient to restore the damaged Common Area, the damaged Common Area shall be restored.

11.1.4 Insufficient Proceeds. If, after applying the proceeds pursuant to Section 11.1.3 above, the total funds available to the Association are still insufficient to restore the damaged Common Area, then the Board shall attempt to first impose an additional Special Assessment pursuant to Section 11.1.4(a) below; secondly, use a plan of alternative reconstruction pursuant to Section 11.1.4(b) below; and lastly, purchase the damaged Units pursuant to Section 11.1.4 (c). If the Members do not approve actions under Subsections 11.1.4(a), 11.1.4(b), or 11.1.4(c), then the entire Project shall be sold by the Board pursuant to Section 11.1.5 below.

(a) Additional Special Assessment. If the total funds available to restore the damaged Common Area as provided in Section 11.1.4 above are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment and deciding upon the amount thereof (“Additional Special Assessment”). If the amount of the Additional Special Assessment approved by the Members, together with the amounts available pursuant to Section 11.1.4 above is sufficient to restore the damaged Common Area, the damaged Common Area shall be restored. If the amount of the Special Assessment approved by the Members, together with the amounts available pursuant to Section 11.1.4 above is insufficient to restore the damaged Common Area, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Subsection (b) below.

- (b) Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Common Area making use of whatever funds are available to it pursuant to Section 11.1.4 and whatever funds, if any, are available to it pursuant to Section (a) above (“Alternative Reconstruction”). All proposals shall be presented to the Owners. If two-thirds ($\frac{2}{3}$) of the Owners whose Units were directly affected by the damage to Common Area, as determined by the Association (“Affected Owners”) and a majority of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Common Area in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the Association shall consider purchasing the Units of the Affected Owners pursuant to Section (c) below.
- (c) Purchase of Units of Affected Owners. If no plan of Alternative Reconstruction is agreed to within six (6) months of the date of the damage, then the Board shall seek to obtain the approval of the Owners, the Affected Owners, and their First Mortgagees of the Association’s purchase of the Condominiums of the Affected Owners. The purchase price (“Purchase Price”) for each Condominium shall be the fair market value of the Condominium immediately prior to the damage as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as elected by the Board. If two-thirds ($\frac{2}{3}$) of the Members (including the Affected Owners) agree to the purchase, the Association shall purchase the Condominiums of those Affected Owners, who together with all of their First Mortgagees, agreed to the purchase, if there are insufficient funds to pay the Purchase Price for all Condominiums owned by Affected Owners who together with all of their Mortgagees agreed to the purchase, then a Special Assessment shall be levied against all Owners. The aggregate amount of the Special Assessment shall be the amount needed to pay the difference between the aggregated amount of available funds (pursuant to Subsections 11.1.3 and 11.1.4(a) and (b) and the aggregate fair market value of the Condominiums of the Affected Owners who agreed to the purchase.

- (d) Sale of Entire Project. If the aggregate amount of funds available for restoration of the Common Area is insufficient to restore the damaged Common Area, Alternative Reconstruction (as defined in Subsection (b) above) cannot be agreed to, and the Owners did not approve a purchase pursuant to Subsection (c), then the Board shall be empowered to sell the entire Project, including all Units and the Common Area, in their then present condition, on terms to be determined by the Board. If the entire Project is sold, the proceeds from the sale, together with the insurance proceeds received and any balance of funds held by the Association, shall be distributed among those Owners who then own Condominiums and their respective Mortgagees, in proportion to the respective fair market values of the Condominiums immediately prior to the destruction, as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board.

11.1.5 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction or as soon as possible thereafter if obtaining required permits and other approvals delay the construction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition it was in prior to such damage or destruction and shall be carried out pursuant to all Applicable Laws and ordinances.

11.1.6 Insurance Trustee. All property insurance proceeds payable to the Association under the policy described in Section 11.2, subject to the rights of Mortgagees under Article 13, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as

their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the United States that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

11.1.7 Right to Partition. No Owner shall have the right to partition of his or her interest in the Condominium and there shall be no judicial partition of the Project or any part thereof, except as provided in Article 12 below.

11.1.8 Authority to Effect Changes. If the building or portion thereof is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Building may be repaired or reconstructed in a manner that alters the boundaries of the Units or Common Area provided the following conditions are satisfied.

- (a) The alteration has been approved by the Board, by Members holding a majority of the total Voting Power of the Association, and by the holders of any First Mortgages to the extent required herein;
- (b) The Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the building;
- (c) The alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Unit Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than ten percent (10%) from that which was originally constructed;
- (d) The Board has determined that any alteration that will relocate or reduce the Common Area will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Area; and
- (e) The Condominium Plan is amended to reflect the alteration to the Units or Common Area.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Common Area as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

11.1.9 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One Hundred Thousand Dollars (\$100,000.00), as adjusted annually for CPI increases for the San Diego area. The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing such Improvements to the extent insurance proceeds are unavailable, subject to the Board's powers to impose Special Assessments.

11.1.10 Board's Action. The Board shall have the exclusive right to participate in and represent the interests of all Owners in any proceedings affecting the Project relating to the rebuilding of any portion of the Project, including without limitation, proceedings with any governmental or quasi-governmental agency to obtain permits or approvals for any rebuilding, and no Owner shall have the right to directly participate therein.

11.2 **Condemnation.** If at any time all or any portion of the Project, or any interest therein, shall be taken through any public or quasi-public taking by exercise of eminent domain or by private purchase in lieu of eminent domain ("Condemnation"), the award in Condemnation allocable to the Project shall be paid to the Association. The Board shall have the exclusive right to participate in and represent the interests of all Members in the Condemnation proceedings affecting the Project and no Owner shall have the right to directly participate therein. The Board shall promptly notify all Owners (and all insurers, and guarantors who have requested written notice), as soon as the Board becomes aware of any taking or threatened taking of any portion of the Project by Condemnation.

11.3 **Association as Trustee of Condemnation Process.** In the event of any taking of a Condominium, the Owner (and his or her Mortgagees as their interest may appear) of the Condominium shall be entitled to receive the award for such taking and after acceptance thereof, such Owner and the Owner's Mortgagee shall be divested of all further interest in the Condominium and membership in the Association if such Owner shall vacate his or her Unit as a result of such taking. In such event, said Owner shall grant his or her remaining interest in the Common Area appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common

Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

11.4 Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Section 10.2 of this Declaration, restoration and repair of any damage to the interior of any individual Unit, including without limitation all fixtures, cabinets and Improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Unit so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article 11, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

11.5 Dispute Resolution. In the event of any dispute under this Article 11, the following shall apply:

11.5.1 Mediation. The parties must first attempt to settle any claim by mediation in accordance with the current rules of the National Conflict Resolution Center ("NCRC") unless the parties mutually agree to another set of rules or approach to mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with NCRC. A demand for mediation shall be made within a reasonable time after the claim has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation. The cost of the mediator and mediation services shall be shared equally by the parties.

11.5.2 Arbitration. If the dispute is not resolved by mediation, the dispute shall be determined by arbitration. Any arbitration proceeding undertaken pursuant to this paragraph shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time demand for arbitration is made. The arbitration shall take place in San Diego, California before a single arbitrator. The parties incorporate herein the provisions of California Code of Civil Procedure section 1283.05 with respect to any such arbitration. The decision of the arbitrator shall be conclusive, final, and binding upon all of the parties, their heirs, executors, administrators, successors, assigns, officers, directors, and shareholders, as applicable. Judgment upon the decision of the arbitrator may be entered in any court of competent jurisdiction. The cost of such arbitration (including any attorneys' fees) shall

be borne by the non-prevailing party (as determined by the arbitrator).

- 11.5.3 Tolling of Statute of Limitations. The parties agree that any applicable statute of limitations shall be tolled during the pendency of any mediation or arbitration proceedings.

ARTICLE 12 - PARTITION AND SEVERABILITY OF INTERESTS

12.1 **Suspension.** The right of partition is suspended pursuant to California Civil Code section 4610 as to the Project. Nothing in this Declaration shall prevent partition or division of interest between joint or common Owners of any Condominium.

12.2 **Partition.** Notwithstanding the foregoing, judicial partition shall be permitted as set forth below.

- 12.2.1 No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

- (a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the Voting Power of the Association and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or
- (b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the Voting Power of the Association and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or
- (c) As allowed by California law, including Civil Code section 4610 as the same may be amended from time to time.

- 12.2.2 An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

12.2.3 Nothing in this Section shall be deemed to prohibit partition of a co-tenancy in a Condominium.

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

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

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

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

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

12.5 **Prohibition Against Severance.**

12.5.1 An Owner shall not be entitled to sever such Owner's Unit from such Owner's membership in the Association, and shall not be entitled to sever such Owner's Unit and such Owner's membership from such Owner's undivided interest in the Common Area for any purpose. Interests in a Condominium cannot be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Unit over the Common Area from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict

severability pursuant to California Civil Code section 4650 or any successor statute or law. Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in Section 12.1 in which the right to partition the Project is suspended thereunder.

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

ARTICLE 13 - RIGHTS OF MORTGAGEES

13.1 **Conflict.** Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein. The trustee, if any, may rely on the following certifications in writing made by the Board:

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

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

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

13.4.1 Condemnation or Loss Casualty. Any condemnation loss or casualty loss which affects either a material portion of the Project or the Unit on which the Eligible Holder holds a First Mortgage;

13.4.2 Delinquency. Any delinquency in the payment of assessments or charges owed by the Owner of a Unit which is subject to a

First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

- 13.4.3 **Insurance.** Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- 13.4.4 **Material Changes.** Any proposal to take any action specified in this Article or in the Article hereof entitled "Destruction of Improvements and Condemnation";
- 13.4.5 **Default.** Any default by an Owner or Mortgagor of a Unit in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; and
- 13.4.6 **Consent.** Any proposed action that requires the consent of a specified percentage of Eligible Holders.

13.5 **Reserve Fund.** The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area Improvements that the Association is obligated to maintain.

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

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

13.8 **Voting Rights of Mortgagees.** For purposes of this Section, a First Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

13.9 **Actions Requiring Eligible Holder Approval.** Unless at least sixty-seven percent (67%) of the Eligible Holders or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association shall not be entitled to:

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

- 13.9.3 By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Units, the exterior maintenance of Units, or the upkeep of lawns, plantings or other landscaping in the Project;
- 13.9.4 By act or omission change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area;
- 13.9.5 Partition or subdivide a Condominium;
- 13.9.6 Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- 13.9.7 Use hazard insurance proceeds for losses to property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

13.10 *Votes for Termination of Project.* Except as provided by statute in the case of condemnation or substantial loss to Units and/or the Common Area, any election to terminate the legal status of the Project as a Condominium Project shall require:

- 13.10.1 The approval of at least sixty-seven percent (67%) of the Eligible Holders and sixty-seven percent (67%) of the total Voting Power of the Association if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or
- 13.10.2 The approval of sixty-seven percent (67%) of the total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders based on one (1) vote for each Condominium encumbered by a First Mortgage owned by the Eligible Holder, if Section 13.9.1 is not applicable.

13.11 *Condemnation or Destruction.* In the event a portion of the Project is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

13.12 **Self-Management.** The approval of sixty-seven percent (67%) of the total Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Condominium encumbered by a First Mortgage owned by the Eligible Holder, shall be required to assume self-management of the Project, if professional management of the Project has been previously required by the Governing Documents or by an Eligible Holder.

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

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

13.15 **Mortgagee Protection.** A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Unit in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Unit if the Unit is acquired by foreclosure, trustee's sale or otherwise. If any Unit is encumbered by a First Mortgage or first deed of trust made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the First Mortgage, with the foreclosure purchaser taking title to the Unit, free of the lien for assessments or installments that has accrued up to the time of the foreclosure sale. On taking title to the Unit, the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Unit. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

13.16 **Subordination.** The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code section 5650, and any successor statutes or laws, provided for herein shall be

subordinate to the lien of any First Mortgage with respect to any Condominiums. Sale or transfer of any Condominiums shall not affect the assessment lien.

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

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

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

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

13.21 **Inapplicability of Right of First Refusal to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or Ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

ARTICLE 14 - AMENDMENTS

14.1 **Owner and Eligible Holder Approval of Amendments.**

14.1.1 Except as may otherwise be stated in this Declaration, the Declaration may be amended at any time and from time to time, provided that the vote or written consent of at least fifty-one percent (51%) of the total Voting Power of the Association has been obtained.

14.1.2 Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice-President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the

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

- 14.1.3 In addition to the foregoing, in the case of any material amendment, the vote of fifty-one percent (51%) of the Eligible Holders (based on one vote for each Mortgage owned) and fifty-one percent (51%) of the Voting Power of Members shall be required. "Material Amendment" shall mean, for the purposes of this Section 14.1, any amendment to provisions of this Declaration governing any of the following subjects:
- (a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use);
 - (b) Assessments, collection of assessments, assessment liens and subordination thereof;
 - (c) The reserve for repair and replacement of the Common Area;
 - (d) Property maintenance obligation;
 - (e) Casualty and liability insurances;
 - (f) Reconstruction in the event of damage or destruction;
 - (g) Rights to use the Common Area;
 - (h) Leasing of Units;
 - (i) Voting;
 - (j) Any provision which, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;
 - (k) Imposition of any restriction on any Owner's right to sell or transfer his or her Unit;
 - (l) Restoration of the Project; or
 - (m) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

- 14.1.4 Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in Subsections 14.1.3(a), 14.1.3(f), 14.1.3(l), and 14.1.3(m) may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Eligible Holders (based upon one (1) vote for each such Eligible Holder).
- 14.1.5 Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request.
- 14.1.6 If the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

14.2 *Amendment of Declaration or Bylaws by Board Vote.*

- 14.2.1 The Board of Directors shall have the power to amend this Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board, the Board shall have the power to prepare and adopt, or in the case of the Declaration, to record an amendment for the following purposes:
- (a) To correct any printing or grammatical error or omission in this Declaration or the Bylaws.
 - (b) To make any change in the Declaration or Bylaws required by a change in any Applicable Law, including court decisions, which obligate the Association, the Board or the Owners to conform their conduct to the terms of the Applicable Law.
 - (c) To make any change in the Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.
- 14.2.2 If the Board approves an amendment using the procedure in this Section, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an explanation of why the proposed change in the Governing Documents falls within one of the purposes listed above.

- 14.2.3 An amendment shall be considered ratified, unless within thirty (30) days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent (20%) of the votes in the Association sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.
- 14.2.4 This Section shall not restrict the powers of the Owners to amend this Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.
- 14.2.5 All Eligible Holders who record Mortgages after the recordation of this Declaration shall automatically be deemed, with each such recording, to have subordinated their respective interests to any subsequently recorded amendment or restatement to this Declaration provided that any approvals required by this Article 14 or Civil Code section 4275 has been obtained in accordance with the provisions set forth herein or the court.

14.3 **Restatement of Declaration.** Upon obtaining any approvals required by this Article 14 or Civil Code section 4275, the Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration rather than recording only an amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its recordation. The restatement shall replace the prior Declaration and its amendments in their entirety, without affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration on its initial date of recordation.

14.4 **Statute of Limitations to Challenge Amendments.** No action to challenge the terms or validity of any amendment to this Declaration or to the Bylaws may be made more than one (1) year after the recording date in the case of an amendment to the Declaration, or more than one (1) year after the official tally of the vote in the case of an amendment to the Bylaws.

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

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

ARTICLE 15 - GENERAL PROVISIONS

15.1 **Duration.** The provisions of this Declaration, including the covenants, conditions and restrictions contained herein shall continue to be effective for a period of sixty (60) years from the date of recordation. Thereafter, the Declaration shall be automatically extended for successive periods of ten (10) years until the Owners of all of the Units in the Project shall determine that they shall terminate it pursuant to the amendment provisions of Article 14 above.

15.2 **Enforcement and Non-Waiver.**

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

15.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 15.2.1 in enforcing any action under the Governing Documents, for monetary damages, the parties shall comply with the provisions of California Civil Code section 5930 and any successor statutes or laws. The Board shall annually provide to the Members a summary of the provisions of California Civil Code section 5930 and any successor statute or law, which shall include the language required and shall be delivered in the manner provided in Civil Code section 4040. The exception for disputes related to

Association assessments set forth in section 5930 shall not apply to disputes between a Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code section 5658 and any successor statutes or laws.

15.3 *Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers.* Notwithstanding any provision of this Declaration to the contrary, any action or claim by, between or among the Declarant, or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the “Declarant Parties”) and any Owner, relating to or arising out of the Project, this Declaration or other governing documents for the Association, any other agreements between the Declarant Parties and an Owner or the Association (unless any such agreement specifies another form of dispute resolution), the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of the Property or Project where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that cannot be granted by a Municipal Court in the State of California as of January 1, 1999 (collectively, “Dispute(s)”), shall be subject to the provisions set forth below.

15.3.1 Notice. Any person with a claim defined as a Dispute, above (“Claimant”), shall notify each applicable Declarant Party in writing of the claim, which writing shall describe the nature of such claim and any proposed remedy (the “Claim Notice”).

15.3.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually agreeable time, the Declarant (and any applicable Declarant Parties) and their respective representatives shall have full access to the property that is subject to the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Section 15.3. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant (and any applicable Declarant Parties) elects to take

any correction action, the Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action

15.3.3 Mediation. If the parties to the Dispute cannot resolve the claim, pursuant to the procedures described in Section 15.3.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section 15.3.3) or any successor thereto or to any other entity offering mediation services that is acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 15.3.7 below, the Association and each Owner covenant that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Section 15.3.3.

- (a) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.
- (b) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to

conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.

- (c) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to the Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code section 1115 et seq., or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code sections 1115 through 1128 shall also be applicable to such mediation process.

- (d) Persons Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator, provided, however, that such permission and consent shall not be required to allow participation of such parties' insurer in the mediation to the extent required under such parties' liability insurance policy. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by

witnesses in the court of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

- (e) Expenses. The expenses of witnesses of either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

15.3.4 Judicial Reference. Should mediation pursuant to Section 15.3.3 above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to California Code of Civil Procedure sections 638 and 641 through 645.1 or any successor statutes thereto, and as modified or as otherwise provided in this Section 15.3.4. Subject to the limitations set forth in this Section 15.3.4, the judicial referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceeding and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

- (a) Participation by Declarant Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding if (i) all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant parties, or (ii) the enforcement of the provisions of this Section 15.3.4 would impair the insurance coverage of a Declarant Party for any claim arising out of the Dispute. Prior to commencement of any action under this procedure, Claimant(s) will allow Declarant a reasonable time in which to determine if the parties described in Subsection (i) above can be joined in the judicial

reference proceeding, to seek the consent of its liability insurance carrier to the judicial reference proceeding and to contact each applicable Declarant Party with respect to any consent required by their insurance carriers. If Declarant determines that it cannot join all of the parties set forth in Subsection (i) above or that Declarant's insurance coverage would be impaired with respect to the Dispute, or if Declarant is advised by a Declarant Party that it contends its insurance coverage will be impaired by enforcement of this Section 15.3.4, Declarant may either elect not to participate in the judicial reference proceeding, or, in the case of the impairment of a Declarant Party's insurance coverage, seek enforcement of its right to have such Declarant Party participate in the judicial reference proceeding by motion or other application pursuant to California Code of Civil Procedure sections 638 and 641 through 645.1 or any successor statutes thereto. If Declarant elects not to participate in the judicial reference proceeding, Declarant will provide notice to Claimant(s) that the Dispute will not be resolved by judicial reference. If Declarant is unsuccessful in its attempt to compel any Declarant Party to participate in the judicial reference proceeding, Declarant will provide notice to Claimant(s) that such Declarant Party will not participate in the judicial reference proceeding and whether or not Declarant will participate in such proceeding. Upon receipt by Claimant(s) of notice from Declarant that any Declarant Party will not participate in the judicial reference, the judicial reference shall proceed as to all parties except such Declarant Party and upon receipt of such notice, Claimant(s) may commence legal proceedings against such Declarant Party in an appropriate court of law. In the event that Claimant(s) are permitted to commence legal proceedings as provided herein, Subsections (b) through (f) and (h) through (n) of this Section 15.3.4 will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and any applicable Declarant Party shall waive their rights to a jury (unless all parties to such proceeding mutually consent otherwise) and agree that the waiver of punitive damages set forth in Section 15.3.4(g) below shall be applicable in such proceeding.

- (b) Place. The proceedings shall be heard in San Diego County.

- (c) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the Dispute or interest in the Project. The parties to the dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of San Diego County, who shall select the referee.
- (d) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (e) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.
- (f) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing, and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in Section 15.3.2 above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (g) Limitation on Remedies; Prohibition on Award of Punitive Damages and Damages for Diminution in Value. The referee shall not have the power to award punitive damages or damages for alleged diminution in value of an Owner's Unit. In addition, as further provided below, the right to punitive damages and damages for diminution in value of property is waived. Except as otherwise

provided herein, the referee shall have the power to grant all legal and equitable remedies and award compensatory changes in the judicial reference proceeding.

- (h) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of San Diego County.
- (i) Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.
- (j) Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.
- (k) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.
- (l) Post-hearing Motions. The referee shall have the authority to rule on all post hearing motions in the same manner as a trial judge.
- (m) Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

- (n) Expenses. The fees and costs of any judicial reference proceeding hereunder shall be equally shared by the parties to the judicial reference proceeding. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

15.3.5 AGREEMENT TO DISPUTE RESOLUTION; WAIVERS OF JURY TRIAL AND AWARD OF PUNITIVE DAMAGES AND DAMAGES FOR DIMINUTION IN VALUE. DECLARANT AND BY ACCEPTING A DEED FOR A CONDOMINIUM, EACH OWNER AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 15.3 AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 15.3. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 15.3, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY AND FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE DAMAGES OR DAMAGES FOR ALLEGED DIMINUTION IN VALUE OF AN OWNER'S UNIT RELATING TO SUCH DISPUTES, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO SUCH REMEDIES. THIS SECTION 15.3 SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

15.3.6 Exceptions to Mediation and Reference; Statutes of Limitation. Nothing in this Section 15.3 shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties and any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party or Owner is necessary to preserve the Declarant Parties' or Owner's rights under any applicable statute of limitations, provided that the Declarant Party or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in Section 15.3.3.

15.4 ***Obligations of Owners.*** No Owner may avoid the burdens or obligations imposed on him by this Declaration through non-use of any Common Area or the facilities located thereon or by abandonment of his Unit. Upon the conveyance, sale, assignment or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Unit after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his

again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of any Owner under this Declaration.

15.5 **Headings.** The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

15.6 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or provisions of it shall not invalidate any other provision.

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

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

15.9 **Fair Housing.** No Owner shall execute or cause to be recorded an instrument which imposes a restriction upon the sale, leasing or occupancy of their Unit on the basis of race, sex, color, religion, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry.

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

15.11 **Notification of Sale of Condominium.** Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

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

15.13 **Exhibits.** All exhibits referred to are attached to this Declaration and incorporated by reference.

15.14 **Easements Reserved and Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

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

15.16 **Governing Document Priorities.** [Civ. Code § 4205] In the event of a conflict among the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Condominium Plan, (2) this Declaration, (3) the Articles, (4) the Bylaws, and (5) the Rules.

15.17 **Conflict with Statutes.** Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents.

15.18 **References to Code Sections.** Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in this Declaration are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents shall be controlled by relevant provisions of the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.) and the California Corporations Code and by judicial interpretations of these statutes, whether the Association is incorporated or not. In the event any of the statutes or laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified or otherwise changed. If a statute or law is deleted, any reference herein shall be deemed to refer to any successor statute or law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 31 day of July, 2019.

ASSOCIATION:

CITYFRONT TERRACE HOMEOWNERS ASSOCIATION
a California nonprofit mutual benefit corporation

By: Susan M Miller
President

Susan M Miller
(Print Name)

By: K Cameron Campbell MD
Secretary

K Cameron Campbell MD
(Print Name)

SEE ATTACHED CALIFORNIA
ACKNOWLEDGMENT

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this ____ day of _____, 20__.

ASSOCIATION:

CITYFRONT TERRACE HOMEOWNERS ASSOCIATION
a California nonprofit mutual benefit corporation

By: _____
President

(Print Name)

By: K Cameron Campbell MD
Secretary

K Cameron Campbell MD
(Print Name)

**SEE ATTACHED CALIFORNIA
ACKNOWLEDGMENT**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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

State of California }
County of San Diego }

On July 31, 2019, before me, Roxana Villagrana Escogido, Notary Public, personally appeared K. Cameron Campbell

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

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



WITNESS my hand and official seal.

SIGNATURE

Roxana Villagrana Escogido

PLACE NOTARY SEAL ABOVE

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of attached document

Title or type of document: Amended & Restated Declaration - City Front Terrace

Document Date: July 31, 2019 Number of Pages: 2 w/attach

Signer(s) Other than Named Above: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California
County of Sonoma }

On July 31st, 2017 before me, CHRIS LE, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Susan M Miller
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

EXHIBIT "A" - PROJECT LEGAL DESCRIPTION

PARCEL 1 OF PARCEL MAP NO. 16759, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 28, 1992.

EXHIBIT "B" – VARIABLE ASSESSMENT AND FIXED ASSESSMENT SCHEDULE

PORATABLE ITEMS

(The dollar amounts are for illustrative purposes only and do not reflect the actual assessment amounts.)

Operating Costs:

Insurance \$215,000.00
Electricity/Gas \$339,000.00
Water \$87,600.00
Heating & Air Conditioning \$25, 200.00

Reserves:

Paint \$36,250.00
Roof \$19,533.33
Boilers/Storage Tanks \$10,666.67
Cooling Tower \$6,666,67

\$739,916.67 Divided by 12 =
\$61,659.72 (Monthly Proratable Amount)

Total Budget:	\$2,058,603.30
Proratable Items:	- \$739,916.67
Base:	\$1,348,686.63/12 months/320 units = \$351.22/unit/month

EXHIBIT "C" - MAINTENANCE LIST

The following is a listing of the items within the Property, the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Section 8.5 of the Declaration. This does not eliminate the Owner's responsibility to request and receive architectural approval pursuant to the Governing Documents or supersede the Owner's obligations under Section 9.4 of the Declaration or any other similar provision in the Governing Documents.

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Appliances - Built-in	✓		
	Appliances - Free Standing	✓		
	Balcony – Waterproofing"	✓		
	Bathtub Waste and Overflow	✓		1
	Cabinets - in Units	✓		
	Flooring - in Units	✓		
	Parking Space - Concrete Surfaces	✓		
	Caulking – Exterior		✓	
	Caulking – Interior	✓		
	Ceilings	✓		
	Common Area Improvements		✓	
	Doorbell - Exterior Components/Button Switch	✓		2
	Doorbell - Interior Components; Wiring	✓		2
	Doors - Entry - Frame & Door	✓		2
	Doors - Entry - Locks and Hardware	✓		2
	Doors - Entry - Painting - Exterior Surface	✓		2
	Doors - Entry - Painting - Interior Surface	✓		

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Doors - Entry - Weather Stripping/Waterproofing/Smoke Curtain Threshold	✓		2
	Doors – Interior	✓		
	Doors, Screen/Security	✓		
	Doors, Sliding Glass	✓		2
	Doors, Sliding Glass - Frame and Tracks	✓		2
	Doors, Sliding Glass – Screen	✓		
	Drainage Systems (e.g., ditches, catch basins)		✓	
	Drains - Bathtubs, Showers, Sinks	✓		
	Drains – Curb		✓	
	Drains – Yards		✓	
	Dryer Vents – Cleaning	✓		
	Dryer Vents – Repair	✓		
	Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.), including from building movement	✓		
	Drywall - Interior – Replace	✓		
	Electrical – Main Breaker and Feed to Unit Panel	✓		1
	Electrical Panel/Circuit Breakers/Interior	✓		1
	Electrical Switches, Sockets, Wall Plates - Interior	✓		1
	Electrical Switches – EUCA, Sockets, Wall Plates – Fixtures-Lamps	✓		1
	Electrical Wiring – Interior	✓		1

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Exhaust Fans Ducting Vents and Grills	✓		2, 7
	Exterior Building Surfaces		✓	8
	Exterior Faucets, Handles, Washers		✓	5
	Exterior Lighting Fixtures (Common Area)		✓	5
	Fences - Common Area		✓	
	Fire Sprinklers – Common Area		✓	
	Fireplace - Chimney - Exterior and Spark Arrestor	✓		2
	Fireplace - Chimney Flue Cap	✓		2
	Fireplace - Chimney - Interior – Cleaning	✓		2
	Fireplace - Fire Brick (fire box)	✓		2
	Fireplace - Mantelpiece, Trim and Facing	✓		2
	Fireplace - Ceramic Brick Walls	✓		2
	Floor – Structural		✓	9
	Floor Coverings - Carpet, Vinyl, Tile and Wood	✓		
	Forced Air Units – Each Unit	✓		1
	Garage Door Openers – Keys, Electronic Credentials	✓		
	Garage Doors – Replacement		✓	
	Garbage Disposal	✓		
	Gas Lines - Below Ground		✓	
	Glass - Recreation Area		✓	
	Glass - Unit Windows/Doors (EUCA Patio Drains and Balcony Scuppers)		✓	4
	Gutters & Downspouts		✓	5

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Hose Bibs		✓	5
	HVAC Components Unit	✓		1
	Insulation	✓		
	Interior Finishes – All	✓		
	Landscaping - Common Area; Greenbelt		✓	
	Landscaping – (Common) – First Floor Patios	✓		
	Lighting Fixtures - Common Areas		✓	5
	Lighting Fixtures - Inside Units	✓		
	Lighting Fixtures - Outside – Front		✓	5
	Lighting Fixtures - Outside – Patio	✓		2
	Linoleum & Vinyl Flooring - Inside Units	✓		
	Mailboxes – Door, Hardware and Lock	✓		2
	Painting – Interior	✓		
	Patio – Gates and Hardware	✓		2
	Patio/Roof Deck Membranes/Waterproofing		✓	
	Patio/Balcony/Roof Deck Railings - Painting (Inside/Outside Surfaces)		✓	
	Patio/Balcony/Roof Deck Railings – Replacement		✓	
	Patio/Balcony Painting		✓	
	Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, etc.)	✓		

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Plumbing Lines - Inside Unit, if not located behind or within walls, floors or ceilings	✓		1
	Plumbing Lines - Located within floors, behind or within walls or ceilings, and in Common Area	✓		1
	Pool, Pool Building, Jacuzzi, Equipment		✓	
	Pressure Regulators		✓	5
	Railings and EUCA Planter Boxes - Units		✓	
	Roof Decking		✓	
	Roof Flashing & Other Roofing Components		✓	
	Roof Shingles/Tiles		✓	
	Roof Underlayment		✓	
	Roof Vents		✓	5, 10
	Security System – Unit	✓		
	Sewer Lines and Back- Ups - Common Use Portion of Line		✓	6, 11
	Sewer Lines and Back-Ups - Single Use	✓		6
	Sidewalks - Common Areas		✓	
	Slab		✓	
	Sliding Patio Door Flashing/Waterproofing	✓		
	Smoke/CO Alarm	✓		
	Household Pests (Ants, Fleas, Roaches, Bedbugs, Rodents, etc.)	✓		
	Exterior Pest Control		✓	
	Streets		✓	

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Stucco Painting/Coloring		✓	
	Stucco Repair & Replacement		✓	
	Termite Treatment - Common Area		✓	
	Wood Destroying Pests in Floors, Furniture and Other Non-Structural Elements	✓		12
	Termite Inspection		✓	
	Toilet - Wax Ring/Flange/All	✓		
	Trim - Wood - Exterior - Maintenance & Replacement		✓	
	Trim - Wood - Exterior - Painting		✓	
	Walls – Interior Perimeter/Separation Bearing, Studs, Frames, Tiedowns, Other Structural Items		✓	
	Walls - Non-bearing Interior Partition	✓		
	Wallpaper/Paneling/Paint/Other Finishes Unit	✓		
	Water Heater - Common Area		✓	
	Window and Slider Screens	✓		
	Window Flashing/Waterproofing Except Weather Stripping, Mohair (Wear Components)		✓	2, 4
	Window Frames		✓	4
	Window Hardware	✓		
	Window Sills Interior Stone or Other	✓		
	Wiring - Cable TV/Telephone/Communications	✓		1, 3
	Wiring - Electrical - From	✓		1

(111) AMENDED AND RESTATED DECLARATION – CITYFRONT TERRACE

	COMPONENT(S)	OWNER	ASSOC.	FOOTNOTE
	Breaker to Interior			
	Wiring - Electrical - From Outside to Breaker in Unit	✓		1
	Wiring - Telephone	✓		1, 3

FOOTNOTES

1. All utilities (interior and exterior to the Unit) and supporting components serving Unit exclusively up to the point of intersection with common element utilities: water, sewer, electric, gas HVAC, telecom cabling, pipes, vents, ducts, wires, conduit.
2. Any item appurtenant to a Unit including common elements subject to wear or deterioration by use or absence thereof shall be maintained repaired or replaced by owner except when replaced as an association restoration/update project. Example: broken hinge on EUCA gate, door bell button, window hinge or balance, front door finish, balcony.
3. Change to Cabling – a subset of utilities; to include wire, fiber optic or other means of communications infrastructure.
4. Glass altered in any way, including application of film becomes the responsibility of Unit owner as well as window and door frames and mullions and flashing when altered or damaged by drilling or other attachment.
5. Unless appurtenant to Unit.
6. Sewer backup is not a component – introduces a different type of responsibility and in doing so demonstrates an absence of other liabilities.
7. Except roof mounted unit and common vent shaft.
8. Except general cleaning of EUCA walls, ceilings, floors, railings.
9. Except structural floors installed as an improvement.
10. Fireplace chimney cap.

11. Except when evidence supports origin of blockage as a Unit responsibility.

12. Association reserves right to require complete removal of wood products containing wood destroying pests.