NOTICE:

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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WHEN RECORDED, RETURN TO:

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5600 THIRD STREET

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ARMSTRONG TOWNHOMES

DECLARATION

OF

RESTRICTIONS (CC&Rs)

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If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, 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.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See the Alternative Dispute Resolution (ADR) Provisions in Exhibit D. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

ARMSTRONG TOWNHOMES

DECLARATION

OF

RESTRICTIONS (CC&Rs)

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ARMSTRONG TOWNHOMES

DECLARATION

OF

RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by ARMSTRONG TOWNHOMES, LLC, a California limited liability company (the "Declarant") with reference to the following facts:

A. Declarant is constructing a residential condominium development consisting of 124 condominiums located on certain real property in San Francisco, California, described as Parcel A on the subdivision map entitled "Final Map 3813" filed in the records of the City and County of San Francisco, California, on September 26, 2007, in Book 102 of Condominium Maps, at Pages 146 through 148, inclusive (the "Map"), and more particularly described on the Condominium Plan for the development entitled "Residential Condominium Plan for Armstrong Townhomes" recorded in the records of the City and County of San Francisco, California. Parcel B shown on the Map is not subject to this Declaration.

B. Declarant desires to impose certain restrictions on the condominiums in the development that will benefit and bind each condominium, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the condominiums, and to establish a condominium project within the meaning of Civil Code section 1.351(f).

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Architectural Committee or Committee. The Architectural Committee described in **Section 7.1**.

1.2 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.3 Association. Armstrong Townhomes Association, a California nonprofit mutual benefit corporation.

1.4 Association Property. All of the real property shown as: (i) Parcel A on the Map and the Improvements thereon except the Condominium Buildings and the Units within the Buildings; and (ii) Lot 4 located immediately adjacent to the southwest corner of Parcel A shown on the Map and described as "Lot 4, Assessor's Block 5421, City of San Francisco, County of San Francisco, State of California, Lot 004, Block

5421". The Association Property includes the land, drive aisles, walkways, sidewalks, podium, parking spaces, garage, courtyards and airspace situated within Parcel A and outside the Condominium Buildings described in **Section 1.10**.

The separation point between Condominium Buildings Podium A and Podium B and the garage within the Association Property is the highest point of the podium above the garage within the Association Property.

1.5 Board. The Board of Directors of the Association.

1.6 Building Common Area. The element of a Condominium that is owned in undivided interests in common, consisting of the airspace, land and Improvements within the Condominium Building described in **Section 1.10** but excluding the Units located therein. The Building Common Area for each Condominium Building is separate and distinct so that the Owner of an undivided interest in the Building Common Area owns an undivided interest only in the Building Common Area of the Condominium Building in which the Owner's Unit is located and in no other Condominium Building. The Building Common Area of each Condominium Building includes the foundations; structural beams; columns; exterior walls and trim; windows; roofs; exterior doors; bearing walls; sprinklers; sprinkler pipes and vents (including portions that protrude into the Unit); exterior staircases; fireplaces, chimneys and flues (if any); life safety systems; reservoirs; tanks; pumps; meters; ducts; flues; chutes; conduits; pipes; plumbing; wires; and other utilities (except the fixtures located within the boundaries of a Unit); and all other Improvements permanently affixed to the Condominium Building except the Improvements located within the boundaries of a Unit as described in **Section 1.28**.

1.7 Bylaws. The Bylaws of the Association and any amendments thereto.

1.8 Common Area. The Association Property and Building Common Area.

1.9 Condominium. A fee (perpetual) estate in real property as defined in Civil Code section 1351(f) consisting of two elements: (i) a separate interest in space, called a "Unit" as described in **Section 1.28**, and (ii) an undivided interest in common in the Building Common Area of the Condominium Building within which the Unit is located as described in **Section 1.6**.

1.10 Condominium Building. The building, land, airspace, and all other Improvements located within each three-dimensional condominium building envelope shown on the Condominium Plans, including any Improvement permanently affixed to the Condominium Building structure regardless of whether the Improvement is located in whole or in part outside the Condominium Building envelope. There are seven Condominium Buildings shown on the Condominium Plans identified as Condominium Buildings TH-A, TH-B, TH-C, TH-D and TH-E and Podium Buildings A and B. The Condominium Building does not include the land, the garage underneath, the airspace or any other Improvements situated outside the Condominium Building envelope as shown on the Condominium Plans unless the Improvement (such as a deck) is permanently affixed to the building located within the envelope. These items are part of the Association Property as described in **Section 1.4**.

1.11 Condominium Plans. The condominium plans for the Development entitled "Residential Condominium Plan for Armstrong Townhomes" that were prepared in accordance with the requirements of Civil Code section 1351(e) and that were recorded in the records of the City and County of San Francisco, California. A Condominium Plan for a Condominium Building is a separate and distinct condominium plan regardless of whether the plans for two or more Condominium Buildings are recorded in a single document.

1.12 Declarant. Armstrong Townhomes, LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

1.13 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.14 Development. The residential development that is constructed on the property shown on the Map and subject to this Declaration, including the Condominiums and all other Improvements thereon.

1.15 Duplex Units. Units 1775, 1777, 2401, 2403, 2407, 2409, 2413, 2415, 2419 and 2421shown on the Condominium Plans situated within Condominium Buildings TH-A, TH-B, TH-C, TH-D and TH-E.

1.16 Exclusive Use Common Area. The portion or portions of the Common Area described in **Section 2.12** subject to rights for the exclusive use of one or more, but fewer than all, of the Owners.

1.17 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Alternative Dispute Resolution (ADR) Provisions attached as Exhibit D is not part of the Governing Documents.

1.18 Improvements. Any fixtures affixed to any property in the Development within the meaning of Civil Code section 660.

1.19 Map. The subdivision map entitled "Final Map 3813" filed for record in the City and County of San Francisco, California, on September 26, 2007, in Book 102 of Condominium Maps, at Pages 146 through 148, inclusive.

1.20 Member. A member of the Association.

1.21 Mortgage. A recorded mortgage or deed of trust against one or more Condominiums in the Development.

1.22 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Condominium in the Development.

1.23 Owner. The owner or owners of the fee (perpetual) estate of a Condominium in the Development.

1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.25 Podium Units. The Units located within Condominium Buildings Podium Building A and Podium Building B shown on the Condominium Plans.

1.26 Property. Parcel A shown on the Map, together with all Improvements thereon. Parcel B shown on the Map is not subject to this Declaration.

1.27 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

1.28 Unit. The element of a Condominium that is owned separately, consisting of a separate interest in space, the boundaries of which are described in the Condominium Plans as the area designated "Unit" followed by a number or designated "Unit" followed by the letter "A" or "B" and a number. The dimensions of the Unit are measured from the interior unfinished perimeter walls and ceilings, floor, windows, window frames, and perimeter doors and door frames, provided that the Unit includes the wall boards, sheet rock, paint on the interior surfaces, wallpaper, paneling, outlets, stain, tile, hardwood floors, carpet and other ceiling, floor or wall finishes. The Unit does not include the structural component of any load bearing wall, column or other structure member necessary to the support or structural rigidity of any portion of the Common Area. The Unit includes all Improvements and personal property situated within its boundaries, including, but not limited to, interior walls (except interior bearing walls), appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures. The Duplex Units include the garage located within the Unit. Any utility fixtures that are located partially within the Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling, duct or utility chase that traverses a Unit and that contain utilities that serve another Condominium

or two or more Condominiums are Building Common Areas and not part of the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit or Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the Condominium Plans or any other recorded document, regardless of variances between boundaries shown on the Condominium Plans or in any other recorded document and those of the building and regardless of settling or lateral movement of the building.

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a condominium project within the meaning of Civil Code section 1351(f) and consists of 124 Condominiums, including 114 Podium Units and 10 Duplex Units and the Association Property.

2.2 Ownership Interests. Each Owner owns a fee (perpetual) estate in a Condominium consisting of a separate interest in a Unit as defined in **Section 1.28** and an undivided equal interest in common in the Building Common Area described in **Section 1.6** of the Condominium Building in which the Owner's Unit is located. No Owner shall have any interest in any Condominium Building other than the Condominium Building in which the Owner's Unit is located. In addition, each Owner is a Member of the Association. The Association owns the fee (perpetual) estate in the Association Property.

The Unit and the Building Common Area appurtenant thereto may not be separated. Any transfer of a Unit automatically shall transfer the Building Common Area appurtenant thereto regardless of whether the instrument of transfer describes the Building Common Area. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Building Common Area shall be void unless the Unit appurtenant thereto is also transferred.

2.3 Common Area. Each Owner or tenant and their family members and guests have nonexclusive rights to use, enjoy, ingress and egress in, to and throughout the Common Area and any Improvements thereon, subject to the provisions of **Section 2.9** and the Exclusive Use Common Area rights as described in **Section 2.12**. The Association Property is subject to the easements reserved in this Declaration.

2.4 Encroachment Easement. Each Condominium, or portion thereof, and the Association Property as the dominant tenement has an easement over any other Condominium, or portion thereof, or Association Property as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other Condominium Building Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.10**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.5 Utility Easement. Each Condominium as the servient tenement is subject to an easement in favor of each other Condominium as the dominant tenement for the installation, retention, maintenance, repair and replacement of any utility chases, shafts, vents, ducts, lines and other equipment that traverse the Unit of the servient tenement and provide utility service to the dominant tenement or that are a part of the Development's life safety system (the "Utility Facilities"). The location of the easement is the location of the Utility Facilities installed as a part of the original construction of the Unit or as subsequently installed with the consent of the Owner of the servient tenement. The easement right granted hereunder includes access to the Unit as may be necessary to inspect, maintain, repair, replace and/or upgrade the Utility Facilities. The occupants of the servient tenement shall not take any action that would in any manner interfere with the operation of the Utility Facilities.

2.6 Condominium Building Easements. The Condominium Building envelopes shown on the Plans extend outside the exterior walls of the building situated within the envelope. Each Condominium as the servient tenement is subject to an easement in favor of each other Condominium as the dominant tenement for non-exclusive access and use of any walkways situated within the envelope and outside the building and for the right to inspect, retain, maintain, repair and/or replace any utilities that serve the dominant tenement and are situated within the envelope and outside the building structure and not below or above the building structure. The location of the easements is the location of the walkways and utilities installed by or on behalf of Declarant as a part of the original construction of the Improvements within the Development.

2.7 Other Rights. Each Condominium and the Association Property is entitled to the benefits and/or subject to the burdens of any easements, rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Condominium or Association Property, or in any other appropriate public record.

2.8 Appurtenant Rights. Each right or easement described in this **Article 2** is a right or easement that is appurtenant to the Condominium and Association Property; and any transfer of the Condominium or Association Property automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the right or the easement.

2.9 Reservation of Rights. Notwithstanding any property rights, including easements, described herein, each Condominium and the Association Property, as the case may be, are subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct and sell the Improvements that Declarant intends to construct within the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Condominium unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Condominium to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Condominium to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Condominium; and

(iv) the rights reserved in **Sections 2.10, 2.12, 9.9 and 13.10.**

2.10 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision

maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (i) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Condominium or any Exclusive Use Common Area without the prior written consent of that Owner; or (ii) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 1363.07. If Member approval is required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the Exclusive Use Common Area and shall comply with the secret balloting requirements of Civil Code section 1363.03(b). Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.10** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **Article 10**.

2.11 Delegation of Use Rights. An Owner's family members who occupy the Condominium or any guests and any such Persons as may be permitted by the Rules may use and enjoy any Common Area Improvements. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner rents his or her Condominium, the Owner, members of the Owner's family, and the Owner's guest shall not be entitled to use any Common Area Improvements other than such use as is directly related to the Owners rights and duties as a landlord. Such rights may be enjoyed by the tenant and the tenant's family members and guests during the term of the rental agreement.

Any Owner who rents his or her Unit must comply with the requirements of **Section 3.2**.

2.12 Exclusive Use Common Area. Portions of the Common Area are set aside for the exclusive use of the occupants of certain Units and constitute Exclusive Use Common Areas. The area shown on the Condominium Plans with the designation "B" followed by a number or "B" followed by the letter "A" or "B"and a number is set aside for the exclusive use of the occupants of the Unit with the same number or the letter and number as the number or letter and number as the Exclusive Use Common Area balcony or deck.

Condominiums may be assigned the exclusive use of one or more parking spaces. The spaces are labeled "P" followed by a number on the Condominium Plans. The assignment shall be made by Declarant and shall be reflected in the records of the Association pursuant to terms and conditions as agreed upon by Declarant and the assignee. Any consideration received by Declarant for the assignment is the sole and exclusive property of Declarant. Each assigned parking space shall be an Exclusive Use Common Area parking space appurtenant to the Condominium to which the space is assigned and may not be removed from the Condominium or transferred to another Condominium without the written consent of the Owner of the Condominium to which the space is appurtenant. Any transfer of title to the Condominium automatically shall transfer the Exclusive Use Common Area space(s) appurtenant thereto without regard to whether the instrument of transfer describes the parking spaces.

Declarant's right to assign parking spaces as Exclusive Use Common Area parking spaces shall terminate on the first anniversary of the date Declarant transfers title to the last Condominium in the Development or at such earlier date as the Declarant shall notify the Association in writing. Any unassigned spaces after Declarant's assignment rights terminate shall be under the jurisdiction of the Association. The Board may adopt Rules regulating the use of these spaces and may license any unassigned parking spaces to occupants of Condominiums, provided the license and any renewal thereof does not exceed 12 months and provided that if the licensee has the exclusive use of two or more spaces, any such parking space license shall terminate in the event a Condominium that is not assigned an Exclusive Use Common Area parking space is transferred and the new Owner of such Condominium notifies the Association in writing that the Owner desires a parking space. The termination shall be effective thirty (30) days after licensee receives notification of the termination from the Association.

If a Condominium is assigned an Exclusive Use Common Area parking space that is a handicapped space (designated "HCP" on the Condominium Plans), the occupants of that Condominium may park in the handicapped space even if not licensed to use a handicapped space. If a resident of a Condominium is

licensed to use a handicapped space but the Condominium has not been assigned an Exclusive Use Common Area handicapped parking space, the resident may submit a written notice to the Board requesting to exchange the non-handicapped space for a handicapped space. If no Owners of a Condominium with handicapped spaces voluntarily agrees to the exchange, the Board shall conduct a lottery to select the Condominium that will be required to make the exchange. Unless the Owners elect to permanently transfer the spaces as authorized herein, the exchange shall be temporary and shall terminate automatically on the date the occupant is no longer authorized to use a handicapped space or the Condominium to which the handicapped space has been temporarily exchanged no longer has a resident licensed to use a handicapped space. This exchange procedure only applies to permanent residents licensed to use a handicapped space and not guests.

Except for permanent transfers as authorized herein, no Exclusive Use Common Area parking space may be permanently transferred to any other Condominium or any other Person. Nothing herein, however precludes a Condominium Owner from entering into a license agreement with another Condominium Owner or the Association for the temporary use of an Exclusive Use Common Area parking space by a Condominium resident under such terms and conditions as the Owners shall agree, provided that: (i) the licensor must first notify the Association in writing of such license for temporary use; and (ii) the license must provide that if the licensor sells the licensor's Unit the license automatically terminates 30 days after licensor transfers title to licensor's Condominium to the new Owner. This type of transfer shall be a license only and shall not transfer the permanently assigned parking space to the other Condominium, which shall remain appurtenant to the Condominium to which it is assigned as reflected in the parking assignment records of the Association.

Under no circumstances may the right to park in any parking space within the Development be granted to any Person that is not a permanent resident within the Development.

Except as described herein, no other portion of the Common Area is Exclusive Use Common Area. Exclusive Use Common Area rights are appurtenant to the Condominium to which the rights are assigned and may not be separated therefrom except as authorized herein. Any transfer of the Condominium automatically transfers the exclusive use rights appurtenant thereto regardless of whether the instrument of transfer describes the Exclusive Use Common Area rights.

2.13 Restrictions on Partition. Except as authorized in **Sections 2.10, 9.7 and 9.9**, the Common Area shall remain undivided, and there shall be no judicial partition thereof except as may be authorized by Civil Code section 1359 or any successor statute thereto.

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

2.14 Conveyance of Association Property. The Association Property shall be conveyed to the Association on or before the date the Declarant first conveys title to a Condominium which triggers the commencement of assessments under **Section 6.7**. The Association Property as the servient tenement is subject to the easements, covenants and restrictions of record, Declarant's right to assign Exclusive Use Common Area parking spaces as described in **Section 2.12**, to an easement in favor of each Condominium as the dominant tenement for ingress and egress over the private streets and walkways situated on the servient tenement, for support from the land under and adjacent to each Condominium Building, for access to and use of the Exclusive Use Common Areas located therein, for access to and use of (including the right to install, maintain, repair or replace) any utility or related lines and equipment installed within, on or over the servient tenement in order to provide utility or related service to the dominant tenement, including water, electricity, telephone, gas, cable television, fiber optic cable and other telecommunications equipment, and sanitary sewer or storm drainage lines and equipment, and for access to and use of the Association Property by Declarant and its subcontractors and agents to construct, maintain and sell the Condominiums and all related Improvements. The rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Association Property that is undergoing construction or development

activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Association Property as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Board may adopt Rules regulating the use of the Association Property, provided such Rules do not unreasonably interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration.

2.15 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.16 Affordable Housing Program. The Condominiums in the Development participate in an affordable housing program operated by the San Francisco Redevelopment Agency. Each Condominium is subject to certain resale and rental restrictions. The restrictions are set forth in the grant deeds to these Condominiums or other appropriately-recorded documents.

2.17 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Units and noises from outside the Condominium Building, including, but not limited to, noise from music, television sets, stereo and other audio equipment, foot traffic from other Units, plumbing fixture operations, trash disposals, entry gate operations, truck traffic, trains (passenger and freight), street cars, sirens and other street noises and aircraft noise. Because the Units are not soundproof, it is important for occupants to be considerate of their neighbors by reducing sound volumes from audio equipment, particularly between the hours of 10:00 p.m. and 7:00 a.m. and restricting noise generating activities such as vacuuming and washer and dryer operations to daylight hours.

ARTICLE 3 - Restrictions

3.1 Residential Use. Each Condominium shall be used for residential purposes only; and no part of the Development 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 nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Condominiums may use a room or rooms in the residence as an office, provided that the primary use of the Condominium is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Condominium on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Condominiums or other Improvements in the Development by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Condominiums in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration.

3.2 Renting. The Condominiums must be owner occupied and the Owners are prohibited from renting their Condominiums except under the limited circumstances allowed under the Affordable Housing Program described in **Section 2.16**. If allowed under the Affordable Housing Program, each of the following conditions must be satisfied:

(i) the rental agreement is expressly authorized under the Affordable Housing Program described in **Section 2.16**;

(ii) the rental agreement must be in writing;

(iii) the initial rental term shall not be less than 30 days;

(iv) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and

(v) before commencement of the rental agreement, the Owner shall provide the Association with the names of the tenants and each family member who will reside in the Condominium and the address and telephone number of the Owner.

Any Owner that rents his or her Condominium shall keep the Association informed at all times of the Owner's address and telephone number. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

3.3 Nuisance. No activity shall be conducted in any Unit or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Condominium.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked anywhere within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes.

No parking space may be converted into any use that would prevent its use as a parking space. The Board may adopt Rules regulating parking in any unassigned spaces.

Garage access and assigned parking spaces may not be sufficient in size to accommodate larger vehicles, including in particular sports utility vehicles and vans. In addition, certain parking spaces may be smaller in size than a standard parking space and certain spaces may have limited vertical clearance. It is each Owner's sole responsibility to confirm that the garage is accessible for the Owner's vehicle(s), that the Owner's vehicle(s) can fit within the Owner's assigned parking space(s), and that the Owner's vehicle(s) can comply with the restrictions contained herein.

3.5 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto. In addition and without limiting the foregoing or any other right or remedy available to the Board, the Board may impose monetary penalties for violation of any parking restrictions or Rules.

3.6 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

(i) no animal shall be maintained for any commercial purposes;

(ii) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;

(iii) the owner of the animal immediately shall clean up after his or her animal; and

(iv) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Condominium.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of

any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Condominium. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules. The Board may adopt Rules prohibiting certain breeds of dogs within the Development.

3.7 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Condominium except as follows:

(i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Under no circumstances shall any Antenna Equipment be installed within any Common Area or the exterior of any Condominium building, including any exterior wall, railing, deck or floor without the prior written approval of the Board.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.8 Signs. Subject to the provisions of **Section 13.10** and Civil Code Section 1353.6, no sign of any kind shall be displayed from any Condominium that is visible from any other Condominium except any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board or as may be otherwise authorized by law.

3.9 Clothesline. No exterior clothesline shall be erected or maintained on any Condominium; and there shall be no exterior drying or laundering of clothes unless otherwise authorized by the Board in writing.

3.10 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white unless approved otherwise in writing by the Architectural Committee.

3.11 Automobile Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.12 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Condominium or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.13 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Condominium that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Condominium that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.14 Drilling. No drilling, mining, or quarrying operation shall be conducted anywhere within the Development at anytime.

3.15 Sound Transmissions. No Unit shall be altered in any manner that would increase sound transmission to any adjoining or other Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall that increases sound transmission to any other Unit except as authorized by the Architectural Committee. No floor/ceiling assembly shall be modified to lower the Sound Transmission Class (STC) or Impact Insulation Class (IIC) rating below the original design criteria of any assembly between Units and no walls shall be modified to lower the Sound Transmission Class (STC) rating below the original design criteria of any partition between Units or between Units and Common Area. The Architectural Committee shall not grant approval to any floor or wall modification unless the modification includes a level of acoustical separation substantially equivalent to the acoustical separation before the modification.

Except as authorized herein, Owners shall not attach any audio equipment, including speakers or flat screen televisions to walls or ceilings that separate Units. In addition, sources of vibration, such as motors shall not be attached to a wall or ceiling that separates Units when an audible noise can be heard, at any level, in the adjacent unit. Owners desiring to mount audio equipment to a wall or ceiling that separates Units must either do so in strict compliance with any guidelines issued by the Architectural Committee for such installation or by submitting detailed plans to the Architectural Committee for its written approval showing vibration isolation and performances that are achievable to control noise between the adjoining Units.

ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance and Repair Obligations. Each Owner shall maintain his or her Unit and all Improvements therein in good condition and repair at all times, including, but not limited to, interior doors and walls (including exterior surfaces of load bearing walls located within the Unit), floors, cabinets, appliances, and all electrical, heating, plumbing and other utility fixtures situated within the Unit or partially within the Unit and partially within the Common Area and exclusively serving the Unit, such as electrical outlets. Each Owner, at that Owner's cost, shall maintain, repair and replace any windows, exterior doors, and screens and screen doors that serve the Owner's Unit, including exterior door and garage door hardware and garage door opening equipment. The Association shall be responsible for the periodic cleaning of the exterior window surfaces and repainting of the exterior side of the exterior doors, including garage doors pursuant to a schedule determined by the Board. Each Owner shall maintain and repair (including bulb replacement) any exterior door or deck or balcony lighting fixtures that are connected into the Unit's electrical system. Each Owner shall maintain the Exclusive Use Common Area appurtenant to the Owner's Condominium in a neat, clean and sanitary condition at all times.

If damage to any of the foregoing is covered by insurance maintained by the Association, the Association, on request from the Owner, may, at the discretion of the Board, submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Owner. In lieu of filing a claim, the Board may elect to cover the amount that would have been paid through insurance through other funds available to the Association. Each Owner shall maintain any Exclusive Use Common Areas appurtenant to that Owner's Condominium in a neat, clean and sanitary condition at all times.

Each Owner shall be responsible for maintaining any waterproof membrane or similar membrane on the balcony surface within the Exclusive Use Common Area balcony appurtenant to the Owner's Condominium. Maintenance must include periodic inspection of the balcony surface for evidence of leaks and the immediate repair of any balcony surface that is damaged or penetrated in any manner. Owner must take appropriate precautions to prevent the membrane from being penetrated by sharp objects.

In order to reduce the potential for water damage (including mold growth) within the Unit, each Owner shall perform each of the following steps: (i) periodically inspect the Unit for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water

leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the Unit (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the Unit.

Each Duplex Unit Owner shall maintain, repair and replace any smoke detectors located in the Owner's Duplex Unit, including periodic replacement of the battery. The Association shall maintain the automatic fire sprinkler heads located within the Podium Units, provided that each Podium Unit Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Podium Unit. If the smoke detectors within the Podium Units have backup batteries, the Unit Owner is responsible for the periodic replacement of the batteries.

Any electrical wiring, plumbing pipes, drains, flues, heating ducts or other utility equipment that exclusively serves one Unit but is located in the Common Area shall be maintained and repaired by the Association; however, the maintenance, repair and/or replacement costs shall be paid by the Owner of the Unit. If the Owner fails to pay the cost, the Association may levy a reimbursement assessment against the Owner's Condominium. If the utility equipment serves two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment, a portion of which exclusively benefits one Unit and a portion of which benefits two or more Units, the Board shall allocate the cost between the Unit Owner and the Association in a fair and equitable manner.

If any Owner fails to maintain his or her Condominium or Exclusive Use Common Area as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Condominium or Exclusive Use Common Area and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Condominium in the manner described in **Section 6.5**.

Each Owner shall allow agents of the Association access to the Owner's Unit and Exclusive Use Common Area appurtenant to the Owner's Condominium for purposes of performing any of the Association's inspection, maintenance and repair obligations under this Declaration. If any Owner fails or refuses to provide access, the Owner shall be responsible for any maintenance and repair costs that could have been avoided if access had been provided.

In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in **Section 4.5** and (ii) commonly-accepted homeowners' maintenance obligations.

4.2 Association's Maintenance, Repair and Landscaping Obligations. Except to the extent maintained by the Owners as described in **Section 4.1**, the Association shall maintain in good condition and repair at all times the Common Area Improvements, including, but not limited to, foundations, siding, trim, roofs, exterior doors (repainting only), decks, exterior staircases, drive aisles, elevators, trash collection areas, clustered mailboxes, walkways, sidewalks (including sidewalks immediately abutting the Development and not maintained by any governmental agency), parking spaces, garages, and landscaping.

Unless otherwise maintained or repaired by a governmental entity or public or private utility company, the Association shall maintain in good condition and repair all utilities and sanitary sewer and storm drainage facilities situated within the Common Area, including, but not limited to, meters, distribution lines, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, but excluding any utility equipment and fixtures located within a Unit or partially within the Common Area and within the Unit, such as electrical outlets.

The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor.

The maintenance and repair of windows shall be the responsibility of each Owner to the extent described in **Section 4.1**.

In order to reduce the potential for water damage (including mold growth), the Association shall perform each of the following steps: (i) periodically inspect all portions of the Building Common Area and other areas maintained by the Association that are accessible from areas maintained by the Association for water leaks, other evidence of water intrusion (such as condensation on windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation within enclosed areas and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect any water-retaining equipment to ensure that they are properly functioning and not leaking water or otherwise creating water damage (including Mold growth) to the Building Common Area; and (v) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth).

All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

In addition to the foregoing, the Association shall comply with each of the following in performing the Association's maintenance obligations: (i) the Guidelines described in **Section 4.5** and (ii) commonly-accepted homeowners' maintenance obligations.

If the Association requires access to a Unit in order to inspect, maintain, repair or replace any Common Area Improvements maintained by the Association, including the Utility Facilities described in **Section 2.5**, the Association shall provide the Unit occupants with such prior notice as is reasonable under the circumstances and no less than 96 hours' prior notice except in the event of an emergency. Owners must cooperate with the Association in providing the necessary access. Any Owner failing to cooperate shall be liable for any costs incurred by the Association in rescheduling inspections and any other costs incurred by the Association in maintaining or repairing Improvements that could have been avoided had timely access been granted. The Association may levy a reimbursement assessment as authorized in **Section 6.5** to recover its costs.

4.3 Trash Removal. Each Podium Unit Owner shall be responsible for the removal of all the trash and refuse from that Owner's Unit to the central collection points located within the Development for trash collection. All trash placed in the trash chute must be fully sealed in a leakproof stable plastic bag that can properly fit into and be transported through the trash chutes. The use of trash chutes shall be limited to the hours of 7:00 a.m. to 10:00 p.m. Except for designated trash areas, no portion of the Common Area shall be used to dump or store, even temporarily, rubbish, trash, garbage or other refuse. Except for materials to be recycled, all rubbish, trash, garbage or other refuse shall not be left in the trash rooms, but shall be placed in the trash chutes. The Board may adopt Rules regulating the trash collection site(s) and, if established, the use and location of recycling bins.

Each Duplex Unit Owner shall be responsible for the removal of all the trash and refuse from that Owner's Condominium. Each Duplex Unit Owner shall engage a trash removal service for the periodic removal of trash from the Owner's Duplex Unit unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which shall be kept in the areas within the garage or otherwise screened from view from any other Condominium except on trash collection day if curbside service is provided. Trash containers shall be placed outside for curbside service no earlier than

the evening before trash collection day and shall be retrieved no later than the evening of trash collection day. The Board may adopt Rules regulating the areas where containers may be stored and areas for curbside service.

4.4 Maintenance Responsibility List. Attached to this Declaration as Appendix I is a list that identifies whether the Association or the Condominium Owner is responsible for the maintenance and repair of certain items located in or in close proximity to a Unit. The purpose of this List is to identify certain items maintained either by the Association or the Owner as described in **Sections 4.1 and 4.2**. It is not intended to change the allocations. The Board from time to time may update Appendix I by recording an amended Appendix I in the records of the City and County of San Francisco, California. The consent of the Members is not required as long as the allocation of the maintenance and repair responsibilities as reflected in the amended Appendix I is consistent with the allocation responsibilities described in **Sections 4.1 and 4.2**.

4.5 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Condominium, shall deliver the Guidelines or complete copies thereof to the transferee on or before title is transferred. Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant at Declarant's principal place of business. Declarant may charge a reasonable fee for providing replacement copies.

The Board periodically and at least once every three years shall review and update the Guidelines for all Improvements maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**. The Board shall retain copies of the Guidelines, including all revisions, and shall provide copies of Guidelines pertaining to Improvements maintained by the Owner, to any new Owner within the Development within 60 days of the date of transfer of title to the new Owner.

4.6 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.2** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Condominium and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

4.7 Reimbursement. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets (including, but not limited to, any damage to the Common Area caused by a water leak or overflow from the Owner's Unit), the Association shall charge the cost to the Owner of the Condominium responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount shall be paid by the Owner.

ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, the Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 1357.100 through 1357.150 regarding the elections to the Board and related matters that satisfy the requirements set forth in Civil Code section 1363.03.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Condominium, each Owner shall be a Member. The holder of a security interest in a Condominium shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Condominium. Membership shall be appurtenant to the Condominium and may not be separated therefrom. Any transfer of an Owner's interest in a Condominium (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Condominium in which he or she owns an interest. If more than one Owner owns an interest in a Condominium, only one vote may be cast with respect to that Condominium.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Condominium owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) the total outstanding votes held by the Class A Members equal the total outstanding votes held by the Class B Members; or

(b) the second anniversary of the first conveyance of a Condominium in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Condominium.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Condominiums. If one class of voting membership exists and Declarant owns any Condominiums, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 5.11 and 5.14** of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If the Condominium has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Condominium is presumed conclusively to be the vote cast by all the Owners of that Condominium. If more than one Owner casts a vote attributed to a Condominium on any matter on which only one vote could be cast for that Condominium, the votes cast by such Owners shall be counted as one vote if the votes are the same; and if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association 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, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Condominiums and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.12(ix),** may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest;

(b) suspend voting rights in the Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 13.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Unit on account of the failure of the Owner to comply with the provisions of this Declaration, Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) Assessment Charges: The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. By way of example, the Association may establish a moving fee to reimburse the Association for excess trash collection costs resulting from the move. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Condominium.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Association and a Member involving the rights, duties or liabilities under

the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area; perform the maintenance as described in **Section 4.2**; prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.5**; prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**; enforce bonded obligations as described in **Section 5.11;** levy and collect assessments as described in **Article 6**; prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required; and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. 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.

Until such time as real property taxes against the Development are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against any Condominium), the non-segregated tax amount shall be allocated among all the Condominiums in the same manner that regular assessments are allocated as described in **Section 6.9** and if any portion of the regular assessments are prorated among the Condominiums, the non-segregated tax amount shall be allocated in the same manner. The Association shall take all appropriate steps to collect each Condominium's allocable share so that the non-segregated taxes may be paid in a timely and proper manner. The Association may levy a special assessment against the Condominiums to collect the non-segregated tax amount. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interests, fees or other such costs incurred as a result of the breach.

5.9 Utility Service. The Association shall acquire, provide and pay for water, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area and any commonly metered utility service to the Units.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The reporting requirements incorporate the requirements imposed on homeowners associations under the Davis-Stirling Common Interest Development Act ("Act") in effect as of January 1, 2009. If the reporting requirements in the Act are subsequently amended, the reporting requirements in the Act, as amended, shall apply.

5.10.1 Pro Forma Operating Budget. A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

(1) Estimated revenue and expenses on an accrual basis.

(2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the "Major Components");

(B) as of the end of the fiscal year for which the study was prepared:

(i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;

(ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 5.10.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.10.2** below, the Association may include in the review a statement containing all of the information required by this **Section 5.10.1(2)(B)(iii)**;

(C) the percentage that the amount in **Section 5.10.1(2)(B)(ii)** is to the amount in **Section 5.10.1(2)(B)(i)**; and

(D) the current deficiency in reserve funding expressed on a per Unit basis. The figure shall be calculated by subtracting the amount determined for purposes of **Section 5.10.1(2)(B)(ii)** from the amount determined for purposes of **Section 5.10.1(2)(B)(i)** and then dividing the result by the number of separate interests within the Association, except that if assessments vary by the size or type of ownership interest, then the Association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to the following:

(A) whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;

(B) whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 1365.5(e), has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(C) the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(D) whether the Association has any loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 1365.2.5(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page

of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

5.10.2 Reserve Funding Plan Summary. A summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 1365.5(e)(4). The summary shall include notice to Members that the full reserve study plan is available upon request and the Association shall provide the full reserve plan to any Member upon request.

5.10.3 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds $75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

5.10.4 Policies and Practices Statement. A statement of the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

5.10.5 Governing Documents. Copies of this Declaration, the Articles, Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this **Section 5.10.5** may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

5.10.6 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to the Members.

5.10.7 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

> Failure of a member of the Association to comply with the alternative dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your right to sue the Association or another member of the Association regarding enforcement of the governing documents or the applicable law.

5.10.8 Insurance Summary. A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

(A) the name of the insurer;

(B) the type of insurance;

(C) the Policy limits of the insurance; and

(D) the amount of deductibles, if any.

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have lapsed, been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.10.8** is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.10.8** shall contain, in at least 10-point boldface type, the following statement:

> This summary of the Association's policies of insurance provides only certain information as required by subdivision (f) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

5.10.9 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365.1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice shall be printed in at least 12-point type.

5.10.10 Architectural Approval/Dispute Resolution Procedure Notices. The Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 7** for physical changes to the Condominiums. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Board as required under **Section 5.6.7**.

5.10.11 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Department of Real Estate issued a final subdivision report, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that

Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described on the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or occupant physical access to his or her Unit, either by restricting access through the Common Areas to the Owner's Unit or by restricting access solely to the Owner's Unit;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Condominium; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Condominiums is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

Furthermore, the Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(v) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(vi) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(vii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(viii) enter into a contract with a third Person to 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 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 the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

(e) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; and

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

(ix) borrow money secured by any Association assets as authorized under **Section 5.6.3**.

5.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

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

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.14 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any

member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.14**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.13, 6.6** and **Article 12.** The provisions of this **Section 5.14** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.15 Access to Association Records. The Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection unless exempt under the provisions of Civil Code section 1365.2(n).

ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Condominium is obligated to pay any assessments levied against that Owner's Condominium on or before the due date of the assessment. If there is more than one Owner of the Condominium, the obligation is joint and several. Each Owner on acceptance of a deed to a Condominium automatically personally assumes the obligation to pay any assessments against the Owner's Condominium (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Condominium regardless of the Owner's possession or use of the Condominium, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area, in an attempt to eliminate or reduce the assessments against that Owner's Condominium. An assessment shall be both a personal obligation of the Owners of the Condominium against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Condominium. Any Owner who transfers a Condominium shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Condominium unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in **Section 10.3**.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board

considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed $25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Condominium regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components that the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half

of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

(i) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;

(ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;

(iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life;

(iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and

(v) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Civil Code section 1363.05. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 1366.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 1365.5(f) or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Condominium Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Condominium or their family members, guests, agents or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10** subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area Improvements or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or

occupant or the Owner's Condominium into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Condominium until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Condominium that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest 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.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this **Section 6.6,** a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

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

(ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety within the Development is discovered; or

(iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must 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 shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the Pro Forma Operating Budget as required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a quorum means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Condominiums on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Condominium by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. No Condominium shall be subject to any special assessments until regular assessments have commenced against that Condominium.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in 12 equal monthly installments; and each installment shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and

payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated among the Condominiums as described in **Sections 6.9.1, 6.9.2 and 6.9.3**. Certain budget items are prorated among the Condominiums. The prorated items identified in **Sections 6.9.2** and **6.9.3** are based on the prorated items set forth in the Proforma Operating Budget (RE623) submitted to and approved by the California Department of Real Estate as a part of the application for a final subdivision report (referred to in this **Section 6.9** as the "Proforma Operating Budget"). The prorations are based on the estimated square footage of each Unit as described in **Exhibit A**. The estimated square footage amounts were obtained from plans and not actual measurements. The actual square footage amounts may differ. The estimated square footage amounts in **Exhibit A** shall control despite any discrepancy with the actual square footage amounts in order to retain a reliable, stable and constant proration schedule. If any prorated item is replaced with an equivalent prorated item it shall be allocated in the same manner as the replaced prorated item. If any new prorated items are added, the prorated item shall be allocated as the Board determines, in its sole discretion, in a fair and equitable allocation.

6.9.1 Parking Expenses. As part of the adoption of each annual regular assessment as required in **Section 6.2**, the Board shall establish a monthly parking fee to be paid by each Condominium Owner that has been assigned either an Exclusive Use Common Area parking space or a license to use a parking space. The fee is a part of the regular annual assessment, is due and payable as a regular assessment, and is subject to the remedies applicable to delinquent assessments as set forth in this Declaration.

6.9.2 Podium Units Expenses. All the expenses, including reserves, relating to the elevators, HVAC systems, garage cleaning, electrical garage gates, electronic entry system, fire and life safety systems and utilities that exclusively serve the Podium Units shall be allocated exclusively among the Podium Units, provided that the expense line items described in **Exhibit B** shall be prorated among the Podium Units, based on the estimated square footage that each of the Podium Units bears to the total estimated square footage of all of the Podium Units using the applicable square footage estimates in **Exhibit A**.

6.9.3 General Common Expenses. All remaining expenses shall be allocated equally among all the Condominiums, provided that the expense line items described in **Exhibit C** shall be prorated among the Condominiums annexed into the Development and subject to assessments based on the estimated square footage that each Unit bears to the total square footage of all the Units using the square footage estimates in **Exhibit A**.

Notwithstanding anything herein to the contrary, if any Condominium is used in such a manner that increases the Association's maintenance, reserve, insurance or administrative costs and the increase can be attributed reasonably to the use of a particular Condominium, the Board may specially allocate the amount of the increase to that Condominium. Prior to implement such a special allocation, the Board shall provide notice to the Condominium Owner, which shall include a reasonable description of the reasons for the special allocation and shall offer the Owner the opportunity to address the Board regarding the Owner's position on the special assessment.

6.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one or more of the following remedies in the event of a delinquent assessment:

6.10.1 Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be

entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2**.

6.10.2 Assessment Lien. Except as otherwise provided in **Section 6.5** and subject to the provisions of **Section 6.10.3**, the Association may impose a lien against the Owner's Condominium for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Condominium to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

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

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

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

(4) The right to request a meeting with the Board as provided by **Section 6.10.2(e)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Association may initiate foreclosure against the Owner's Condominium, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Condominium Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(c) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(e) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Condominium to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(f) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Condominium from and after the time the Association causes to be recorded with the county recorder of the county in which the Condominium is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 6.10.2(h)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Condominium enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(g) A lien created pursuant to **Section 6.10.2(f)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(h) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(f)**, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d plus the cost of service for either of the following: (i) the notice of default pursuant to Civil Code section 1367.1(j); or (ii) the decision of the Board to foreclose upon the separate interest of an Owner as described in Civil Code section 1367.4(c)(3).

(i) If it is determined that a lien previously recorded against a Condominium was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95. The Owner's legal representative shall be the person whose name is shown as the Owner of the Condominium in the Association's records, unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received it.

(k) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, If a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(l) This **Section 6.10.2** is subordinate to and shall be interpreted in conformity with **Section 6.10.3**.

(m) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Condominium Owner.

6.10.3 Assessment Enforcement Restrictions.

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars ($1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, the Association may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

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

(B) In the discretion of the court, an additional amount to that described in **Section 6.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Condominium upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars ($1,800) or the assessments secured by the lien are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

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

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars ($1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any assessments secured by the lien that are more than 12 months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Condominium, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

(3) The Board shall provide notice by personal service in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95 to an Owner of a Condominium who occupies the Condominium or to the Owner's legal representative, if the Board votes to foreclose upon the Condominium. The Board shall provide written notice to an Owner who does not occupy the Condominium by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Condominium may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Civil Code section 2924f, a notice of sale in connection with an Association's foreclosure of a Condominium shall include a statement that the Condominium is being sold subject to the right of redemption created by Civil Code section 1367.4(c)(4).

6.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

6.10.5 Small Claims Court Resolution. If a dispute exists between an Owner and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner, in addition to pursuing dispute resolution under Civil Code sections 1363.810 through 1363.850, may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to Civil Code section 1366(e), and commence an action in small claims court for resolution of the dispute. Nothing in this **Section 6.10.5** shall impede the Association's ability to collect delinquent assessments as provided in Civil Code sections 1367.1 and 1367.4.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2009. If these sections are amended or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

6.11 Assessment Exemption. Any Condominium having no structural Improvement for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural Improvement. The exemptions may include, but are not limited to:

(i) roof replacement;

(ii) insurance;

(iii) exterior maintenance;

(iv) utility chases; and

(v) refuse disposal.

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

(i) a notice of completion of the structural Improvements has been recorded;

(ii) occupation or use of the Condominium; or

(iii) completion of all elements of the residential structures that the Association is obligated to maintain.

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

(i) a notice of completion of the common facility has been recorded; or

(ii) the common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium

that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Condominiums in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Condominiums of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the Person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed in the Condominiums and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Condominiums in the Development; (ii) effect of the proposed location on neighboring Condominiums; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Condominiums; (iv) proper facing of elevations with respect to nearby streets and adjoining Condominiums; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any Unit Improvement that is part of a building structure (including flooring, interior and exterior walls) or any portion of any Unit Improvement that can be seen from the Common Area or any other Unit;

(ii) any planting or landscaping (including the removal of any tree); or

(iii) any replacement or modification to any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling if the replacement, modification, penetration or disturbance could result in any increase in the sound transmissions from the Unit to any other Unit.

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform with any guidelines established by the Committee. Plans shall adequately describe the proposed Improvements; plot layout; all exterior elevations; materials and colors; utility locations; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines it has established for approving plans and specifications, which variances or exceptions may contain such conditions and time limitations as the Committee deems appropriate.

Notwithstanding anything herein to the contrary, any Owner may repaint the interior of the Owner's Unit in any color the Owner desires or remodel the Unit with prior written approval of the Committee which approval shall be granted if the Committee finds the remodeling does not in any manner remove or adversely affect any bearing wall or fire rated wall, affect the structural integrity of the Common Area, alter the exterior appearance of any Condominium Building, or increase the sound transmissions from the Unit to any other Condominium. It shall be the Owner's responsibility to comply with all building code requirements and permitting requirements in connection with any modification to the Owner's Unit.

The Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. If the Committee fails to approve or disapprove any plans or specifications within 60 days of receipt of either the plans and specifications or any advance payments required by the Committee, whichever shall occur later, the plans and specifications shall be deemed approved unless a written extension is executed by the Person submitting the plans and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the plans and specifications and/or advance payments and to establish the date of receipt.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Condominium as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Condominium, Common Area or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing and insurance requirements (including workers compensation and liability insurance; (ii) completion and labor and material bonds or other acceptable collateral; and (iii) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

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

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the application requirements of Civil Code section 714, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

7.3 Architectural Committee's Decision. The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the

decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

7.4 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.5 Non-liability. The Association, the Committee, the Declarant, and the other Condominium Owners, and their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Condominium Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.6 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines or penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.7 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.

7.8 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.9 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Unit Owner or the Association.

ARTICLE 8 - Insurance

8.1 Liability and Fidelity Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, any manager, the Association's directors and officers, and the Owners against any liability incident to bodily injury or property damage from an accident or occurrence within the Common Area. The policy shall also cover any liability incident to bodily injury or property damage from an accident or occurrence within any Condominium related to any maintenance or repair work required to be performed on any Condominium by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, a cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any umbrella liability coverage) shall not be less than $3,000,000 covering all claims for death, bodily injury and property damage arising out of a single occurrence. The $3,000,000 coverage may be a combination of primary and excess policies. Such insurance shall include coverage against liability for non-owned and hired automobile and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a residential condominium association and in sufficient amounts to satisfy the insurance requirements of Civil Code sections 1365.7 or any successor statute thereto.

8.1.3. Fidelity Policy. A blanket fidelity insurance policy covering any Person who either handles or administers (or is responsible for) Association funds, whether or not that Person receives compensation for services. The Association shall be the insured under the policy and the policy shall provide that ten days' written notice be provided to the Association before the policy can be canceled or substantially modified for any reason. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") requirements and in no event shall be less than the sum of three months of assessments on all Condominiums subject to assessments.

8.2 Association Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

8.2.1 Property Covered. The policy shall cover the following real and personal property:

(a) *Common Area.* All Common Area Improvements, including buildings and any additions or extensions thereto; fixtures, machinery and equipment permanently affixed to the Condominium Building; windows; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage;

(b) *Units.* The fixtures originally installed by the Declarant, including upgrades and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements; but excluding any personal property located in the residential structure; and excluding any renovations or upgrades to any of the foregoing made after completion of the original construction of the residence to the extent the replacement cost of any such renovation, upgrade or addition exceeds the replacement cost of the original Improvements as determined on the date that immediately precedes the date of the damage or destruction of the Improvement or upgrade; and

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

8.2.2 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.

8.2.3 Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in **Section 8.2.1** above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

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

8.2.5 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

8.2.6 Waiver of Subrogation. The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees except to the extent of any deductible.

8.2.7 Deductible. The amount of any deductible shall be paid by the Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board. When a claim is made on the Association's property insurance policy, an Owner is responsible for payment of damage up to the amount of the deductible in circumstances: (i) where damage is caused by the fault of the Owner or that Owner's tenant or their family members, invitees or agents; and/or (ii) where damage is caused by the failure of some portion of the Unit which the Owner is responsible for maintaining. In cases where damage affects more than one Condominium or a Condominium and the Common Area and **Section 8.2.7 (i) or (ii)** does not apply, each Owner is responsible for the cost to repair the Owner's Unit up to the deductible and the Common Area immediately abutting the Unit or exclusively serving the Unit and the Association is responsible for the cost to repair any other Common Area Improvements up to the deductible. If the cumulative cost of repairs exceeds the deductible, the burden of the deductible shall be prorated between or among the claimants based on the proportion that the costs of repairs to the Unit or Common Area bears to the total cost of repairs. The Association may levy a reimbursement assessment against an Owner's Condominium as authorized under **Section 6.5** for the Owner's share of the deductible.

8.3 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 8.1** and **8.2** shall have a A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California, provided that if the Board determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Board may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

8.4 Board's Authority to Revise Insurance Coverage. Subject to the provisions of **Section 8.6**, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code sections 1365.7 and 1365.9 or in any successor statute thereto. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the 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.

Each Owner, by acceptance of a deed to a Condominium, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.7**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.6 FNMA, FHLMC and FHA Requirements. Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal Housing Administration ("FHA") or any successor thereto. If the FNMA, FHLMC or FHA requirements conflict, the more stringent requirements shall be met.

8.7 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, 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 county in which the Development is located 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.

8.8 Owners' Individual Insurance Requirements. Each Condominium Owner shall maintain property insurance against losses to personal property located within the Owner's Unit. **The Association's insurance policies will not provide coverage for losses to the Owner's personal property or for any upgrades or additions to any fixtures or Improvements located within the Unit to the extent not covered under Section 8.2.1(b) or (c)**. In addition, each Condominium Owner is advised to maintain a general liability insurance policy in an amount not less than $100,000 covering any liability for injury to any Person or damage to any Improvements or personal property within the Development caused by any act or omission of Owner or tenant of the Owner's Condominium, or their family members, employees, agents or invitees. Each Owner also is advised to carry unit owner building insurance for the Improvements within the Unit to the extent not covered under **Sections 8.2.1(b) or (c)** and loss assessment coverage in such amounts as may be recommended by a qualified consultant. Nothing herein imposes any duty on the Association, its directors, officers or agents (including the manager) to confirm or otherwise verify that the Owners are carrying the recommended insurance.

No Owner shall separately insure any property covered by the Association's property insurance policy as described in **Section 8.2** above. If any 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 assessment against the Owner's Condominium to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 8.8 and regarding loss assessment and unit owners building insurance coverage.

8.9 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2**, the Association may obtain and maintain the following insurance:

(i) Workers Compensation Insurance to the extent required by law; and

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

ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Restoration Defined. As used in this **Article 9**, the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

9.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise authorized under this **Article 9**, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction subject to such changes as may be approved by the Architectural Committee or required by law. 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 8.7**. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

9.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums in accordance with the proration schedule set forth in the DRE Budget described in **Section 6.9.3** and without regard to the extent of damage or destruction to the individual Condominiums.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 9.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 9.5** below. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums. If the Members do not approve such actions, then the provisions of **Section 9.6** shall apply.

9.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 9.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). The Additional Special Assessment shall be allocated among the Condominiums in accordance with the proration schedule set forth in the DRE Budget described in **Section 6.9.3** and without regard to the extent of the damage or destruction to the individual Condominiums. If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 9.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 9.5**.

9.5 Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 9.3** and **Section 9.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose Condominiums were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 9.6** shall apply.

9.6 Sale of Condominium. If the damaged Improvement is part of a Condominium Building (the "Damaged Building"), the damage renders one or more of the Condominiums within the Damaged Building uninhabitable, and the Improvements will not be restored in accordance with the provisions of **Sections 9.3, 9.4 and/or 9.5**, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Condominiums in the Damaged Building in their then present condition on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding); (ii) remove the Damaged Building and restore any remaining Improvements as may be necessary; (iii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area in any manner as may be acceptable to the Board; or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of **Article 7**.

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

If a Damaged Building is restored and the restored Building does not contain the same number of Condominiums as the Damaged Building, the Board shall take appropriate steps to adjust the property interests of the remaining Condominium Owners and to effect such amendments as may be necessary to this Declaration, the Condominium Plans and the Map to reflect the revised property interests and other related changes.

9.7 Restoration of Partition Rights. Notwithstanding anything herein to the contrary, if the damage has rendered any Condominium uninhabitable and (i) within one year of the date of the occurrence of the damage, the Association has not elected to repair the damage under the provisions of **Sections 9.2, 9.3, 9.4 or 9.5** or if so has not commenced and diligently pursued the repair work or (ii) the Association has not commenced and diligently pursued the sale of the Development as authorized under **Section 9.6**, the restriction against partition described in **Section 2.13** shall be null and void and any Owner may bring a partition action under the authority of Civil Code section 1359 or any successor statute thereto.

9.8 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 repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

9.9 Authority to Effect Changes. If any Condominium Building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the Condominium Building is repaired or reconstructed, the Condominium Building may be repaired or reconstructed in a manner that alters the boundaries of the Units, Common Area, and/or Exclusive Use Common Area, provided the following conditions are satisfied:

(i) 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;

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

(iii) the alteration does not materially change the location of any Unit or materially increase or decrease 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 change in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than 10% from the square footage as determined from the Condominium Plans;

(iv) 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

(v) the Condominium Plan or Plans are 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.

9.10 Condemnation. If there is a total sale or taking of the Development, meaning a sale or taking (i) that renders more than 50% of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the Court in the case of a taking) or (ii) that renders the Development as a whole uneconomical as determined by the vote or written consent of 75% of those Owners and their respective first Mortgagees whose Condominiums will remain habitable after the taking, the right of any Owner to partition through legal action as described in **Section 2.13** shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums.

In the case of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority; and any judgment of condemnation shall include the following provisions as part of its terms:

(i) to the payment of the expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) to Owners and their respective Mortgagees as their interests may appear whose Condominiums have been sold or taken in an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board, less such Owner's share of expenses paid pursuant to the preceding subsection (i) (which share shall be allocated on the basis of the fair market value of the Condominium). After such payment, the

recipient shall no longer be considered an Owner, and the Board or individuals authorized by the Board acting as attorney-in-fact of all Owners shall amend the Condominium Plan or Plans, the subdivision map (if necessary), and this Declaration to eliminate from the Development the Condominium so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(iii) to any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all remaining Condominiums but, as of a date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(iv) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board.

Notwithstanding the foregoing, if the amount from the sale or taking is less than $50,000, the Board may elect to retain the amount as a part of the Association's operating or reserve funds in lieu of making a distribution to the Owners.

9.11 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this **Article 9**, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with JAMS' commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a Mortgagee that is: (i) a first Mortgagee that is a federally or state chartered or licensed bank or savings and loan association; (ii) a first Mortgagee that is a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) a first Mortgagee that is an insurance company; (iv) a federal or State agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Administration and the Veterans Administration; (vi) a first Mortgagee under any state or local mortgage assistance or limited equity housing program in place for Condominiums within the Development, including, but not limited to, the San Francisco Redevelopment Agency; or (vii) Declarant or any affiliate of Declarant, including but not limited to, Homebricks, Inc. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Condominium or other portions of the Development. An "eligible Mortgage holder" shall mean a first Mortgagee who has requested the Association to notify the first Mortgagee of any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.2 Encumbrance. Any Owner may encumber his or her Condominium with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Condominium free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Condominium, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Condominium shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Condominium and all future assessments levied against the Condominium as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Condominiums as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgagee under a Mortgage that encumbers all or any portion of the Development or any Condominium made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Condominium is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to effect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Condominium. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

10.6 Special Voting Requirements. Any action taken by the Association, the Members or the Board are subject to the special voting requirements set forth in this **Section 10.6**.

10.6.1 First Mortgagee Approval Rights: Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area of the Development, unless at least two-thirds of the first Mortgagees (based on one vote for each first Mortgage owned) and Owners (other than the Declarant) of the individual Condominiums have given their prior written approval, the Association may not:

(i) by act or omission seek to abandon or terminate the Condominium Development;

(ii) 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 and the Common Area. In the case of a Condominium Development subject to additions or expansions, in which sections or phases are established by the Governing Documents, this requirement will be deemed waived to the extent necessary to allow the phasing or additions in accordance with the Governing Documents;

(iii) partition or subdivide any Condominium;

(iv) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Condominium Development or as authorized under **Section 2.9** is not a transfer within the meaning of this clause. In the case of a Condominium Development subject to additions or expansions in which sections or phases are established by the Governing Documents,

this requirement will be deemed waived to the extent necessary to allow the phasing or additions in accordance with the Governing Documents; or

(v) use hazard insurance proceeds for losses to any Condominium property (whether Units or Common Area) for other than the repair, replacement or reconstruction of the Condominium property.

10.6.2 Material Adverse Amendments: The approval of Mortgagees who represent at least 51% of the votes of Condominiums that are subject to Mortgages must be obtained prior to: (a) the adoption of any amendment of a material adverse nature to Mortgagees; or (b) any action to terminate the legal status of the Development after substantial destruction or condemnation or for other reasons. Approval from a Mortgagee shall be assumed if a Mortgagee fails to submit a response to any written proposal for an amendment or proposed action within 60 days after the Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail within a "return receipt" requested.

10.7 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any first Mortgagees pursuant to their Mortgages in case of payment to the Condominium Owners of insurance proceeds or a condemnation award for losses to or taking of Condominium Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void.

10.8 Mortgagee Notice. If any Owner is in default under any provision of this Declaration or under any provision of the Articles, Bylaws or the Rules and the default is not cured within 60 days after written notice to that Owner, the Association, upon request, shall give to any first Mortgagee of such Owner a written notice of such default and of the fact that the 60-day period has expired.

Any Mortgage holder or guarantor shall have the right to timely written notice of any of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the Mortgage;

(ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit encumbered by the holder's, insurer's or guarantor's Mortgage;

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

(iv) any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.9 Rental and Resale Restrictions. The Condominiums are subject to the restrictions on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium imposed by the Affordable Housing Program described in **Section 2.16**.

10.10 Unpaid Assessments. Any first Mortgagee of a Mortgage recorded prior to the recordation of a Notice of Delinquent Assessment who obtains title to a Condominium pursuant to the foreclosure procedures will not be liable for unpaid delinquent assessments accrued before the acquisition of title to the Condominium by the Mortgagee.

10.11 FHA/VA Loan Provisions. The provisions in this **Section 10.11** are applicable if any loans on any Condominium are insured by the Federal Housing Administration ("FHA") or guaranteed by the U.S. Department of Veterans Affairs ("VA"). If applicable and if any provision in this **Section 10.11** conflicts with any other provision in this Declaration, it is intended that to the extent possible, the provisions be interpreted in a manner that allows compliance with both provisions. If not possible, the provision that provides greater protection to Mortgagee rights shall apply.

10.11.1 Document Availability. The Association shall make available to lenders and holders and insurers of a first Mortgage of any Condominium current copies of the Governing Documents and other books, records and financial statements of the Association. The Association shall make available to prospective purchasers current copies of the Governing Documents and, if prepared, the most recent audited financial statement. For purposes herein, available means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon written request from FNMA, FHLMC, FHA or VA, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

10.11.2 Association Contract Termination Right. The Association shall have the right to terminate without penalty at any time after transfer of control from Declarant to the Association, upon not more than 90 days' notice to any other party and except as otherwise expressly authorized in the Declaration: (i) any management contract, employment contract or lease of recreational or parking areas or facilities binding the Association; or (ii) any contract or lease binding the Association, including franchises and licenses to which a Declarant or any affiliate of Declarant is a party. For purposes herein, "affiliate of a Declarant" means any Person or entity which controls, is controlled by or is under common control with Declarant. A Person or entity shall be deemed to control a Declarant if that Person or entity: (i) is a general partner, officer, director or employee of the Declarant; (ii) is directly or indirectly or acting in concert with one or more Persons, or through one or more subsidiaries, owns, controls, or holds the power to vote or holds proxies representing more than 20% of the voting shares of the Declarant; (iii) controls in any manner the election of a majority of the directors of the Declarant; or (iv) has contributed more than 20% of the capital of the Declarant. A Person or entity shall be deemed to be controlled by a Declarant if the Declarant: (i) is a general partner, officer, director or employee of that Person or entity; (ii) directly or indirectly or acting in concert with one or more Persons or through one or more subsidiaries, owns, controls or holds the power to vote or holds proxies representing more than 20% of the voting share of that Person or entity; (iii) controls, in any manner, the election of a majority of the directors of that Person or entity; or (iv) has contributed more than 20% of the capital of that Person or entity.

10.11.3 Transfer of Control. The Class B Membership described in **Section 5.4.2** shall terminate as described in **Section 5.4.2** unless terminated earlier as described in this **Section 10.11.3**. Under this **Section 10.11.3** the Class B Membership shall terminate and be converted to Class A Membership not earlier than the earlier of the following:

(i) 120 days after the date by which 75% of the Condominiums have been conveyed by Declarant to purchasers; or

(ii) the fifth anniversary of the date of the first conveyance by Declarant of a Condominium to a purchaser.

10.11.4 Notice to First Mortgagees. A first Mortgagee, upon written request to the Association (such request to state the name and address of the first Mortgagee), will be entitled to timely written notice of:

(i) Any proposed amendment of the Governing Documents, Map or Condominium Plans effecting a change in (a) the boundaries of any Unit or the Exclusive Use Common Area appurtenant thereto, (b) the interests in the Common Area or Exclusive Use Common Area appurtenant to any Unit or the liability for Common Area expenses appurtenant thereto, (c) the number of votes in the Association allocated to any Unit, or (d) the purposes to which any Unit or Common Area are restricted.

(ii) Any proposed termination of the Condominium regime.

(iii) Any condemnation loss of any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first Mortgage.

(iv) Any delinquency in the payment of assessments or charges owed by any Condominium Owner where such delinquency has continued for a period of 60 days.

(v) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

10.11.5 Repair or Restoration. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to mortgages held by such eligible Mortgage holders are allocated.

10.11.6 Condemnation/Destruction Termination. Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Condominium property shall require the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by such eligible Mortgage holders are allocated.

10.11.7 Reallocation of Interests. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Condominium Development may be effected without the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by such eligible Mortgage holders are allocated.

10.11.8 General Termination. The consent of Condominium Owners to which at least 67% of the votes in the Association are allocated, and the approval of the eligible Mortgage holders of first Mortgages on Condominiums to which at least 67% of the votes of Condominiums subject to a Mortgage held by an eligible Mortgage holder, shall be required to terminate the Condominium regime.

10.11.9 Eligible Mortgage Holder Consent Requirements. The consent of Condominium Owners to which at least 67% of the votes in the Association are allocated, and the approval of eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to a Mortgage held by an eligible Mortgage holder are allocated, shall be required to materially amend any provisions of this Declaration, the Bylaws or equivalent documents, or to add any material provision thereto, which establish, provide for, govern or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens or subordination of such liens;

(iii) reserves fo maintenance, repair and replacement of the Common Area;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of the several portions of the Condominium;

(vii) expansion or contraction of the Condominium regime or the addition, annexation or withdrawal of property to or from the Condominium regime;

(viii) boundaries of any Unit;

(ix) the interests in the Common Area or Exclusive Use Common Area;

(x) convertibility of Units into Common Area or of Common Area into Units;

(xi) leasing of Units;

(xii) imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer, or otherwise convey his or her Condominium; or

(xiii) establishment of self-management by the Association where professional management has been required by the FHA or VA.

In addition, the consent of the Owners of the Condominiums to which at least 67% of the votes in the Association are allocated and the approval of eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by eligible Mortgage holders are allocated, shall be required to amend any provisions included in the Governing Documents which are for the express benefit of first Mortgagees.

10.11.10 Insurance. The insurance requirements in **Article 8** shall include the following:

(i) The Association's property insurance under **Section 8.2** shall identify the name of the insured substantially as follows:

> "Armstrong Townhomes Association, a California nonprofit mutual benefit corporation, for use and benefit of the individual Owners (designated by name if required by law)."

(ii) Certificates of insurance shall be issued to each Condominium Owner and each Mortgagee upon request.

(iii) The Association shall satisfy the insurance requirements of Section 14 of Appendix 24 of HUD Handbook 4265.1 applicable to FHA and VA.

ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of the votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, 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. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the

President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

11.3 Amendment of the Condominium Plan. The Condominium Plan for each Condominium Building may be amended by the consent of the Owners of Condominiums in that Building and their Mortgagees as required by Civil Code section 1351(e) and the consent of the Board. The consent of no other Owner or Mortgagee shall be required, provided that if the amendment involves the conversion of any Association Property into Building Common Area, the consent of Members holding a majority of the total voting power shall be required. The authorization of an encroachment into Association Property or the designation of Association Property as Exclusive Use Common Area under the provisions of **Section 2.8** shall not be considered a conversion of Association Property into Common Area for purposes of this **Section 11.3**.

11.4 Special Amendment Requirements. Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Unit or the interests in the Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests or Exclusive Use Common Area rights are affected by the amendment, except as authorized in **Sections 2.8 and 9.9**. The provisions of this **Section 11.4** may not be amended without the unanimous consent of the total voting power of the Association.

11.5 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Condominium Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, or any exhibits thereto, including any Condominium Plans, and the consent of neither the Association nor any Condominium Owner shall be required provided that if the correction affects the size, location or access or use rights to any Unit or any Exclusive Use Common Area appurtenant to that Unit, the consent of that Unit Owner shall be required.

11.6 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the U.S. Department of Veterans Affairs (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

ARTICLE 12 - Declarant Disputes

12.1 Resolution of Warranty Claims.

12.1.1 Acknowledgment of Warranty: It is recognize that Declarant and each first purchaser of a Condominium (as to such Condominium), and Declarant and the Association (as to the Common Area), entered into express limited warranties (each a "Warranty"), which apply to each Unit and the Common Area, respectively. Each first purchaser of a Condominium from Declarant, in connection with such purchaser, consented to and ratified the Association's acceptance of the Common Area Warranty. Notwithstanding anything contained in this Declaration, any and all claims or disputes covered by or arising under a Warranty shall be made and resolved as set forth in the Warranty, including, without limitation, any alternative dispute resolution provisions contained therein. Each Owner and the Association shall be required to follow the procedures and requirements set forth in the applicable Warranty. Any and all matters and disputes not arising out of or covered by the Warranty or the first purchase agreement for the Condominium shall be handled in accordance with the provisions and procedures set forth in **Section 12.2** herein. In the event of any conflict between this Declaration and the Warranty, the Warranty shall prevail.

12.1.2 Application of SB 800: California law, at Civil Code Sections 895 through 945.5 (commonly known as "SB 800") provides for standards of construction and functionality relating to Improvements in the Development, as well as procedures for making claims, time limits for bringing certain

actions, and various other obligations of a buyer and a builder of a residence. Chapter 4 of SB 800 contains certain non-adversarial procedures intended to facilitate resolution of disputes between parties. SB 800 allows Declarant to opt out of the Chapter 4 claims procedures of SB 800 and to use alternative non-adversarial contractual provisions to attempt to resolve these disputes. DECLARANT HEREBY INFORMS ALL OWNERS AND THE ASSOCIATION THAT DECLARANT HAS ELECTED NOT TO ENGAGE IN, FOLLOW, NOR BE BOUND BY, THE NON-ADVERSARIAL PROVISIONS SET FORTH IN CHAPTER 4 OF SB 800. INSTEAD, DECLARANT ELECTS TO USE SUCH ALTERNATIVE NON-ADVERSARIAL PROCEDURES AS ARE SET FORTH IN THE APPLICABLE WARRANTY OR IN ITS PURCHASE AGREEMENT WITH EACH OF THE FIRST OWNERS OF UNITS. The Warranty is not an "enhanced protection agreement" within the meaning of SB 800.

12.2 Alternative Dispute Resolution Provisions. Except as set forth in Section 12.1, above, any claims or disputes between Declarant or Declarant Party (as defined in Exhibit "D," attached), on the one hand, and any Owner and/or the Association on the other hand arising out of or in any way relating to the Development, any real property or Improvements in the Development, the Declaration, a purchase and sale contract between Owner and Declarant for the purchase and sale of a Condominium, or regarding the condition of the Units and/or the Common Area, or the design or construction of any portion of the Development, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of Improvements, or disputes which allege strict liability, negligence or breach of implied warranties as to the condition of the Units, the Common Area or other portions of the Development, shall be resolved in accordance with the Declarant Alternative Dispute Resolution ("ADR") Provisions set forth in Exhibit "D," attached hereto and incorporated herein by this reference.

12.3 Required Vote to Make Claim. Prior to filing a claim pursuant to the Declarant ADR Provisions, the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than fifty-one percent (51%) of the Association's voting power (excluding the voting power of Declarant).

12.4 Civil Code Section 1369.510 *et seq.* This Article 12 governs only the resolution of Disputes with Declarant Parties (as defined in the Declarant ADR Provisions), on the one hand, and the Association or one or more Owners, on the other hand. Unless the subject matter of a Dispute expressly involves enforcement of the Restrictions, such Dispute shall not be governed by the provisions of California Civil Code Section 1369.510 *et seq.*, or any successor statute. Each party in a Dispute with Declarant parties shall bear its own attorneys' fees and costs, and the prevailing party shall not be entitled to an award of attorneys' fees or costs, except to the extent provided under California Civil Code Section 1369.510 *et seq.*

12.5 Agreement to Method of Resolving Disputes. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE 12 AND THE DECLARANT ADR PROVISIONS TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 12, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JUDGE OR JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.

12.6 Amendment of Article. Notwithstanding anything in this Declaration to the contrary, without the express prior written consent of Declarant, this Article 12 may not be amended for a period of twenty years from the effective date of this Declaration.

ARTICLE 13 - Miscellaneous Provisions

13.1 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.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

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

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Condominium on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in Government Code section 12955(p), or ancestry.

13.5 Notification of Sale. No later than five days after the closing of the sale of any Condominium, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Condominium.

13.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Condominium in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Condominiums in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

13.9 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

(i) maintain construction equipment, personnel and materials within the Development;

(ii) use such portions within the Development as may be necessary or advisable to complete the construction or sales;

(iii) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;

(iv) maintain sale signs or other appropriate advertisements within the Development ;

(v) maintain model homes for viewing by prospective purchasers; and

(vi) allow prospective purchasers access to the Development to inspect any Common Area or any model homes.

13.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned and delegated hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.12 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or obligations of the Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage fee prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Condominium address in the Development.

13.14 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Condominium in the Development, acknowledges that the

enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

Declarant has executed this Declaration as of August 4th, 2009.

ARMSTRONG TOWNHOMES, LLC
a California limited liability company

By: Bridge Homes, Inc.
a California nonprofit benefit corporation
Its Member

By: _____
Lydia N. Tan
Its Vice President

STATE OF CALIFORNIA
COUNTY OF San Francisco

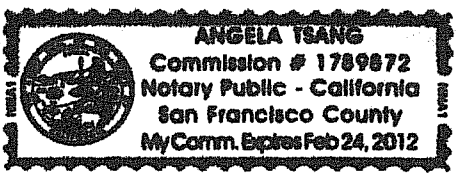
On August 4, 2009 before me, Angela Tsang a Notary Public, personally appeared Lydia Tan

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

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

WITNESS my hand and official seal.

Signature _____
Angela Tsang
Name (typed or printed), Notary Public in and for said County and State.



(seal)

EXHIBIT A - Estimated Unit Square Footage Amounts

These square footage amounts are estimates only. They were obtained from the DRE Budget described in **Section 6.9**. The amounts were derived from plans and not actual measurements. The actual measurements may differ. The amounts in this Exhibit A shall control if there is any conflict from the actual measurements.

No prospective Owner should rely on these estimates in making a decision to acquire a Condominium.

Unit	Estimated Square Footage
A111	1601
A112	1588
A113	1601
A221	1520
A222	1122
A223	1114
A224	1304
A251	1520
A252	1122
A253	1114
A254	1304
A321	1322
A322	1118
A323	1128
A324	1128
A325	1448
A326	1448
A327	1118
A328	1366
A351	1322
A352	1118
A353	1128
A354	1128
A355	1290
A356	1448
A357	1118

Unit	Estimated Square Footage
A358	1366
A4201	1334
A4202	1468
A4203	1128
A4204	1128
A4205	1472
A4206	1506
A4207	1128
A4208	1128
A4209	1412
A4210	1310
A4501	1334
A4502	1298
A4503	1128
A4504	1128
A4505	1472
A4506	1506
A4507	1128
A4508	1128
A4509	1270
A4510	1309
A521	1310
A522	1118
A523	1118
A524	1118
A525	1366
A551	1310
A552	1118
A553	1118
A554	1118
A555	1366

Unit	Estimated Square Footage
B111	1617
B112	1613
B113	1617
B221	1519
B222	1122
B223	1114
B224	1304
B251	1520
B252	1122
B253	1114
B254	1304
B321	1322
B322	1118
B323	1128
B324	1128
B325	1452
B326	1427
B327	1118
B328	1366
B351	1322
B352	1118
B353	1128
B354	1128
B355	1290
B356	1445
B357	1118
B358	1366
B4201	1334
B4202	1464
B4203	1128
B4204	1128

Unit	Estimated Square Footage
B4205	1472
B4206	1505
B4207	1128
B4208	1128
B4209	1412
B4210	1310
B4501	1335
B4502	1298
B4503	1128
B4504	1128
B4505	1472
B4506	1506
B4507	1128
B4508	1128
B4509	1270
B4510	1310
B521	1310
B522	1118
B523	1118
B524	1118
B525	1366
B551	1310
B552	1118
B553	1118
B554	1118
B555	1366
1775	1735
1777	1700
2401	2618
2403	1767
2407	1735

Unit	Estimated Square Footage
2409	1700
2413	1735
2415	1700
2419	1735
2421	2574

EXHIBIT B - Podium Unit Prorated Assessment Line Items

OPERATING:

UTILITIES

PG&E - Natural Gas
Water and Sewer
Miscellaneous Utility

RESERVES:

MECHANICAL SYSTEMS-WATER

Domestic Water Heaters
Circulation Pumps

MECHANICAL SYSTEMS-TRASH

Trash Chutes
Trash Chute Doors

EXHIBIT C - General Common Prorated Assessment Line Items

OPERATING:

ADMINISTRATIVE

Insurance - Package
Miscellaneous Administrative

CUSTODIAL

Window Washing
Miscellaneous Custodial

UTILITIES

Water and Sewer
Refuse Collection
Miscellaneous Utilities

RESERVES:

BUILDING EXTERIORS

Aluminum Storefront Repair
Caulking
Concrete Porch Finish
Concrete Porch Repair
Metal Awning Repair
Polycarbonite Sheeting
Steel Rail Paint
Steel Rail Repair
Masonry Siding Paint
Masonry Siding Repair
Trek Decking
Wood Railing Paint
Wood Railing Repair

ROOFING SYSTEM

Built Up Roofing
Composition Roof Shingle
Roof Drainage
Roof Inspection and Repair

EXHIBIT D - Alternative Dispute Resolution (ADR) Provisions

1. **DEFINITIONS**. For purposes of this Exhibit ("ADR Provisions") only: (i) "Declarant Party" means and includes Declarant, any director, officer, partner, member, employee, agent, or representative of Declarant, and any contractor, subcontractor, design professional, engineer, or supplier who provided labor, services or materials to the Development and who is bound or has agreed to be bound to the following or similar dispute notification and resolution procedures; and (ii) "Dispute" means any and all actions or claims between any Declarant Party on the one hand and any Owner and/or the Association on the other hand arising out of or in any way relating to the Development, any real property or Improvements in the Development, the Declaration, or regarding the condition of the Units and/or the Common Area, or the design or construction of any portion of the Development, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of Improvements, or disputes which allege strict liability, misrepresentation, fraud, negligence or breach of implied warranties as to the condition of the Units, the Common Area or other portions of the Development. Disputes do not include actions taken by the Association against Declarant to collect delinquent Assessments or any action involving any Common Area completion bonds. For purposes of this Exhibit, "Disputes" shall not include any dispute arising out of a home warranty or common area warranty given by Declarant to an Owner or the Association, which disputes shall be resolved pursuant to the terms of the warranty.

The intention and purpose of this Exhibit is to provide that all Disputes be resolved in accordance with the claims procedures set forth in this Exhibit regardless of the legal theory upon which a claim is based so that a certain and efficient method is established for resolution of the Dispute. As a result, Disputes arising out of claims based on misrepresentation, fraud, breach of contract, violation of a statute or personal injury, as well as claims for beach of the functionality standards under Title 7 of the California Civil Code, are subject to the procedures in this Exhibit.

The foregoing notwithstanding, for purpose of this Exhibit, the term "Disputes" shall not include any dispute arising out of a home warranty or common area warranty given by Declarant to an Owner or the Association, which disputes shall be resolved pursuant to the terms of the warranty.

2. PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES: For all "Disputes" Declarant and the Association or Owner, as applicable, agree to follow the pre-arbitration procedures set forth below:

(a) **Notification**: The Owner or Association, as applicable agrees to provide Declarant with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Owner or Association, as applicable becomes aware, or should have become aware, of such matters and Dispute. Notice to Declarant under this Paragraph does not constitute notice of a claim, or any other notice, under Civil Code Sections 895 et seq.

(b) **Cooperation; Access; Repair**: The Owner or Association, as applicable agrees to provide each Declarant Party and its representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to the Development, in order to facilitate Declarant Party's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Improvements and landscaping within the Development, each Declarant party is hereby granted the irrevocable right, but is under no obligation, to inspect, repair and/or replace any and all affected parts of the Development.

(c) **Mediation**: Upon their mutual agreement, the Owner or Association, as applicable and the Declarant Party may agree to voluntary mediation of a Dispute before a mutually-agreeable neutral mediator, in which case, the Declarant Party agrees to pay the mediator's fees for a one-half day mediation session. A decision to mediate or not to mediate by either party is without prejudice to either party's rights.

3. ARBITRATION OF DISPUTES. EXCEPT FOR DISPUTES UNDER THE LIMITED WARRANTY (WHICH SHALL BE RESOLVED PURSUANT TO THE PROVISIONS THEREOF) ANY AND ALL DISPUTES

SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS DISPUTE RESOLUTION AGREEMENT; PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN SECTION 3(a) OR 3(b), BELOW, THE PARTIES SHALL FIRST ATTEMPT TO RESOLVE ANY DISPUTE THAT FALLS WITHIN THE SCOPE OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE DEVELOPMENT.

(a) **Arbitration Rules**. THE ARBITRATION SHALL BE ADMINISTERED BY AND PURSUANT TO THE COMPREHENSIVE ARBITRATION RULES AND PROCEDURES OF JAMS IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION AND PURSUANT TO SECTION 4, BELOW. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE SERVICE IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION SHALL BE FOLLOWED.

(b) **Small Claims**. NOTWITHSTANDING ANY PROVISION OF THIS DISPUTE RESOLUTION AGREEMENT TO THE CONTRARY, EITHER PARTY MAY USE SMALL CLAIMS COURT AS AN ALTERNATIVE TO ARBITRATION OF A DISPUTE, IF THE AMOUNT IN CONTROVERSY IS WITHIN THE JURISDICTIONAL LIMITS OF SMALL CLAIMS COURT.

(c) **Parties Benefitted**. THIS DISPUTE RESOLUTION AGREEMENT SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, THE DECLARANT'S SUBCONTRACTORS, AGENTS, VENDORS, SUPPLIERS, DESIGN PROFESSIONALS, INSURERS AND ANY OTHER PERSON WHOM THE OWNER OR ASSOCIATION, AS APPLICABLE CONTENDS IS RESPONSIBLE FOR ANY ALLEGED DEFECT IN OR TO THE PROPERTY OR AN IMPROVEMENT THERETO. THE PARTIES CONTEMPLATE THE INCLUSION OF SUCH PARTIES IN ANY ARBITRATION OF A DISPUTE AND AGREE THAT THE INCLUSION OF SUCH PARTIES WILL NOT AFFECT THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT.

(d) **Remedies**. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING. THE OWNER OR ASSOCIATION, AS APPLICABLE AND DECLARANT EXPRESSLY AGREE THAT AN APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT AN AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED.

(e) **Self-Executing Agreement**. THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS DISPUTE RESOLUTION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DISPUTE RESOLUTION AGREEMENT, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS DISPUTE RESOLUTION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS DISPUTE RESOLUTION AGREEMENT, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS DISPUTE RESOLUTION AGREEMENT AND NOT BY A COURT OF LAW.

(f) **Participation Not Delay**. THE PARTICIPATION BY ANY PARTY, OR ANY PARTY WHOM THE OWNER OR ASSOCIATION, AS APPLICABLE CONTENDS IS RESPONSIBLE FOR A DISPUTE, IN ANY JUDICIAL PROCEEDING CONCERNING THIS EXHIBIT "D" OR ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, STAY, OR REFUSE TO PARTICIPATE IN ARBITRATION, OR TO REFUSE TO COMPEL ARBITRATION, INCLUDING INSTANCES IN WHICH THE JUDICIAL PROCEEDING INVOLVES PARTIES NOT SUBJECT

TO THIS ARBITRATION AGREEMENT AND/OR WHO CANNOT OTHERWISE BE COMPELLED TO ARBITRATE.

(g) Federal Arbitration Act. THE OWNER OR ASSOCIATION, AS APPLICABLE AND EACH DECLARANT PARTY EXPRESSLY AGREE AND ACKNOWLEDGE THAT THIS AGREEMENT INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES (AS DEFINED IN THIS DISPUTE RESOLUTION ADDENDUM) SHALL BE ARBITRATED – WHICH ARBITRATION SHALL BE MANDATORY AND BINDING – PURSUANT TO THE FEDERAL ARBITRATION ACT, AND TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THE LATTER RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

4. RULES AND PROCEDURES—ALL DISPUTES. The following rules or procedures apply to any arbitration under this Dispute Resolution Addendum:

A. The arbitrator must be a neutral and impartial retired judge, attorney, or other person with substantial experience in relevant matters. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the arbitration or reference services, or, if no entity is involved, by the court with appropriate jurisdiction.

B. If a Dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the dispute resolution procedures prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the proceeding. Declarant, as named in the Declaration, shall not be required to participate in the proceeding if all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant Parties, will not or cannot be joined in the proceeding such that Declarant may be forced to litigate in two separate forums or may suffer inconsistent rulings.

C. The exclusive venue for all dispute resolution proceedings conducted under this provision shall be in the county in which the Development is located.

D. Any administration fee charged by the arbitration service shall be borne initially one half by the Owner or Association, as applicable, and one half by the Declarant Party(ies); provided, however, that the administration fee and any other fees and costs of the arbitration ultimately shall be borne as determined by the arbitrator. The arbitrator shall award litigation "costs" to the prevailing party to the same extent and in the same manner as a California court may award such "costs" pursuant to California Code of Civil Procedure Section 1032, et seq. For purposes of determining the "prevailing party," the arbitrator or referee shall specifically consider, in addition to other factors deemed relevant under local law, the total relief requested by each of the involved parties, the total relief awarded as to each of the involved parties, and any prior settlement offer of the parties in relation to the total relief awarded.

APPENDIX I - Unit Maintenance and Repair Responsibilities[1]

Note: This Appendix is not intended to be an all inclusive list of the items maintained either by the Owner or the Association. Its purpose is to describe maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party. Unless otherwise limited, maintenance means inspection, cleaning, maintenance, repair and replacement.

ASSOCIATION

Within the Unit

Building fire alarm system (Podium Units only)
Structural repairs to load-bearing walls (except sheetrock or wallboard)
Fire sprinkler heads (Podium Units only)

Within the Common Area:

Unit exterior door surfaces (repainting only)
Cleaning exterior window surfaces

CONDOMINIUM OWNER

Within the Unit:

Interior doors and hardware
Interior walls (except structural repairs to load-bearing walls)
Wall coverings (e.g., wallpaper)
Floor coverings (e.g., tile, carpets, carpet pads, and hardwood floors)
Ceiling coverings
Paint
Light fixtures and light bulbs
Cabinets
Appliances (e.g., refrigerators, stoves, ovens, dishwashers, garbage disposals, trash compactors)
Electrical system (e.g., light fixtures, light switches, light bulbs, bathroom fan fixtures, and wiring)
Heating system (e.g., baseboard electric heaters, wall-mounted electrical heaters, heater fans and components)
Plumbing and water system (e.g., toilets, showers, tubs, faucets, pipes, drains and water heaters)
Window coverings
Door locks
Door bells
Door thresholds
Mirrors
Smoke detectors, including battery replacement
Trade fixtures
Fire safety system (Duplex Units only)

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[1] The purpose of this exhibit is to describe the party responsible for maintaining and repairing certain items located within the Unit and within certain portions of the Common Area located in close proximity to the Unit in accordance with the provisions of **Sections 4.1 and 4.2**.

Within the Common Area:

Exterior door and door hardware (except repainting exterior surface)
Any lighting fixtures (including bulb replacement) that is connected into the Unit's electrical system (including front door and deck and balcony exterior lights)
Windows (replacement or repair of broken windows)
Electrical wiring, plumbing pipes and drains that exclusively serve the Unit[2]
Balcony or deck waterproof membranes

[2] Pursuant to **Section 4.1** of the Declaration these items shall be maintained and repaired by the Association and the cost shall be paid by the Condominium Owner.