MIRA

**COVER PAGE FOR RECORDED GOVERNING DOCUMENT**

California *Government Code* section 12956.1(b)(1)

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**RESTRICTIVE COVENANT MODIFICATION**

California *Government Code* section 12956.2(f)

The following reference document contains a restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955 of the Government Code, or ancestry, that violates state and federal fair housing laws and is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) ___ of the document recorded on _____, 20__ in book _____ and page _____ or instrument number _____ of the official records of the County of San Francisco, State of California.

Attached hereto is a true, correct and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of Section 12956 of the Government Code.

The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(Signature of submitting party)

San Francisco County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction and this modification may be recorded.

Or

San Francisco County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

By: _____

Date: _____

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**GOVERNMENT CODE**

**Section 12956.2**

---

12956.2. (a) (1) A person who holds or is acquiring an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant in violation of subdivision (*l*) of Section 12955 may record a document titled Restrictive Covenant Modification. A title company, escrow company, county recorder, real estate broker, real estate agent, or other person also may record the modification document provided for in this section. The county recorder may waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of a restrictive covenant modification document. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive covenant language redacted.

(2) Beginning July 1, 2022, if a title company, escrow company, real estate broker, or real estate agent has actual knowledge that a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property includes a possible unlawfully restrictive covenant, they shall notify the person who holds or is acquiring the ownership interest in the property of the existence of that covenant and their ability to have it removed through the restrictive covenant modification process. There shall be no presumption that a party providing a document has read the document or has actual knowledge of its content.

(3) Beginning July 1, 2022, if requested before the close of escrow, the title company or escrow company directly involved in the pending transaction shall assist in the preparation of a Restrictive Covenant Modification pursuant to this section, but the title company or escrow company shall have no liability associated with the recordation of a Restrictive Covenant Modification that contains modifications not authorized by this section on behalf of the requester.

(b) (1) Before recording the Restrictive Covenant Modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the language in the original document contains an unlawful restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination within a period of time specified in paragraph (2). The county recorder shall refuse to record the modification document if the county counsel or their designee finds that the original document does not contain an unlawful restriction as specified in this subdivision or the modification document contains modifications not authorized by this section.

(2) For documents recorded pursuant to subdivision (a), the period of time shall be a reasonable period of time, not to exceed three months, from the date the request for recordation is made, unless extraordinary circumstances apply.

(c) If a person requests to record a modification document, that person shall provide a return address in order for the county recorder to notify this person of the action taken by the county counsel on the respective property. The notice required pursuant to this subdivision may be made on a postcard mailed by first-class mail.

(d) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(e) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(f) A Restrictive Covenant Modification form shall be prepared and accepted for submission and recordation in all counties in substantially the following form:

RESTRICTIVE COVENANT MODIFICATION:

The following reference document contains a restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955 of the Government Code, or ancestry, that violates state and federal fair housing laws and is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) ___ of the document recorded on _____(date) in book _____ and page _____ or instrument number _____ of the official records of the County of _____, State of California.

Attached hereto is a true, correct and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of Section 12956 of the Government Code.

The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(Signature of submitting party)

_____ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction and this modification may be recorded.

Or

_____County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

By:

Date:

(g) The county recorder shall make available to the public Restrictive Covenant Modification forms onsite in an appropriately designated area, or online on the county recorder's internet website, either of which shall be deemed to satisfy the requirement of paragraphs (1) and (2) of subdivision (b) of Section 12956.1 to provide a Restrictive Covenant Modification form if the procedural information for appropriate processing is attached to the form. Those forms shall permit multiple submissions on behalf of different homes and for processing homes in batches with respect to a modification document that affects multiple homes or lots. The forms shall also permit the submission of a restrictive covenant modification form for a homeowners' association or a common interest development to modify covenants, conditions, and restrictions that will correct unlawfully restrictive covenants for multiple dwellings within a subdivision.

(h) If a person causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the person who caused the modified recordation as provided in subdivision (a).

(i) (1) A restrictive covenant modification that is approved by county counsel or their designee and recorded pursuant to this section removes the illegal covenant from all property affected by the original covenant regardless of who submits the modification.

(2) This section does not affect the obligations of the governing board of a common interest development as defined in Section 4100 or 6534 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 4225 or of subdivision (b) of Section 6606 of the Civil Code.

(j) For purposes of this section, "redaction" and "redacted" mean the same as defined in Section 12956.1.

(Amended by Stats. 2021, Ch. 359, Sec. 2. (AB 1466) Effective January 1, 2022.)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, California 94104
Attn: Jay F. Drake, Esq.
FWPN-3551401172

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Chicago Title Co.
BY:

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APNs: 3740-036 through 3740-435, inclusive [condominium units]
Formerly APN: 3740-035
Formerly APNs: 3740-027; 029; 030; 031; 032 [underlying]

Situs: 270 & 280 Spear Street; 275 & 285 Main Street; 110-150 Folsom Street

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP OF MIRA, A CONDOMINIUM PROJECT**

**THE TITLE 7 MASTER DECLARATION REFERRED TO IN THIS DECLARATION CONTAINS PROVISIONS FOR JUDICIAL REFERENCE AND BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. JUDICIAL REFERENCE AND ARBITRATION INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE ARBITRATION AND JUDICIAL REFERENCE PROVISIONS IN THE TITLE 7 MASTER DECLARATION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.**

**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 OF THE GOVERNMENT CODE, 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.**

3

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**DECLARATION**
**OF**
**COVENANTS, CONDITIONS AND RESTRICTIONS**
**ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**
**OF**
**MIRA,**
**A CONDOMINIUM PROJECT**

This Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of MIRA (this "Declaration") is made on the date hereinafter set forth by BLOCK ONE PROPERTY HOLDER, L.P., A DELAWARE LIMITED PARTNERSHIP (the "Declarant") and is made with specific reference to the following facts:

A. Declarant is the owner of that certain tract of land located in the City and County of San Francisco, State of California, described on Exhibit A hereto, and commonly known as MIRA (the "Property"). The Property is more particularly described on that certain condominium map entitled Final Map 9675 (the "Map"), recorded on November 21, 2019, in Condominium Map Book 137, at Pages 70 through 73, inclusive, in the Official Records of the City and County of San Francisco, State of California (the "Official Records").

B. The Property is further shown and described on that certain condominium plan entitled "Condominium Plan for MIRA, San Francisco, California", which was recorded on [FEBRUARY 10], 20[20], as Instrument No. [2020-K900746] in the Official Records (the "Condominium Plan").

C. There is located upon the Property multi-story buildings with a tower component containing residential and commercial condominium units, a podium component containing residential and commercial condominium units, a townhome component containing residential condominium units, a below ground garage, a central courtyard, roof deck area, Clementina Street, together with certain appurtenances and related improvements.

D. The Development generally includes the following: (i) a market-rate residential component consisting of 236 residential condominium units ("Market Rate Units") in a residential tower and adjacent townhomes (Market-Rate Project"), which market-rate residential units are not subject to any affordability requirements; (ii) an inclusionary affordable housing component consisting of 80 residential condominium units in the tower and in adjacent townhomes, which inclusionary affordable residential units are subject to certain affordability requirements ("Developer Inclusionary Project"); (iii) an OCII-subsidized affordable housing component consisting of 76 residential condominium units in two connected podium buildings, which OCII-subsidized affordable residential units are subject to certain affordability requirements ("OCII Affordable Project") (together, units in the Developer Inclusionary Project and in the OCII Affordable Project are referred to herein as the "Affordable Housing Units"); (iv) streetscape improvements including Clementina Street on the northern edge of the Property, an extra-wide sidewalk along Folsom Street, and sidewalks along Main and Spear Streets; (v) ground-floor commercial/retail space along Main, Folsom, and Spear Streets; (vi) shared and private open space, including courtyard(s), terrace(s) and roof deck(s); and (vii) a shared underground parking facility.

E. As further described in this Declaration, it is the intent of Declarant that two or more Commercial Units (defined in Section 1.1) may be combined, or the boundaries of the Commercial Units may be adjusted, by the Commercial Unit Owner(s) in order to create a different number or configuration of functional commercial space(s) that will serve the intended purposes of such Commercial Unit Owner(s). It is the intent of Declarant that two or more Commercial Units may be combined into one or

more commercial space(s), and that the Development may contain a number of individual commercial space(s) different than the number of Commercial Units shown on the Condominium Plan. It is also the intent of Declarant that Commercial Units that have previously been combined into commercial spaces may be divided and returned to their original configuration, or reconfigured, combined or adjusted to create a new configuration or number of commercial spaces. Reference is made to Section 2.14 of this Declaration for further detail.

F. Declarant intends to establish a mixed-use residential and commercial "condominium project," as defined in Section 4125 of the California Civil Code, to subdivide the Property as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code, and to impose mutually beneficial restrictions under a general plan of improvement and development for the benefit of all the condominiums created pursuant to the Davis-Stirling Common Interest Development Act (Civil Code Section 4000 et seq.) (the "Davis-Stirling Act"), which provides that a condominium shall consist of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit.

G. Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the airspace contained in each unit, and co-ownership interest as a tenant in common with the other individual owners, as hereafter set forth, of the Common Area portions of the Development, as hereinafter defined. The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Common Area, subject to the terms of this Declaration.

**NOW, THEREFORE,** Declarant hereby declares that the herein above described Property and the condominium units therein shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions, easements, servitudes and liens all of which are declared and agreed to be in furtherance of a plan for condominium ownership as described in the Davis-Stirling Act for the subdivision, improvement, protection, maintenance and sale of condominiums within or upon the Development and all of which are declared and agreed to be for the purpose of enhancing and protecting the value and attractiveness of the Development and every part thereof. All of such limitations, covenants, conditions, restrictions, easements, servitudes and liens shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Development. Declarant further declares that it is the Declarant's express intent that this Declaration satisfy the requirements of the Davis-Stirling Act.

## ARTICLE 1
## DEFINITIONS

**Section 1.1 Definitions.**

"Affordable Housing Units" shall collectively mean and refer to the Residential Units in the Developer Inclusionary Project and the Residential Units in the OCII Affordable Project. Pursuant to Section 5.05 of the DDA, the Affordable Housing Units shall be sold pursuant to OCII's Limited Equity Program. Reference is made to Section 5.05 of the DDA for further detail.

"Annual Assessment" shall mean and refer to an Assessment against Condominiums in the Development which is levied pursuant to Section 4.3. An Annual Assessment imposed by the Master Association shall apply to the Condominiums in the Master Association, and an Annual Assessment imposed by a Sub Association shall apply only to the Condominiums in the particular Sub Association.

"Architectural Control Committee" shall mean and refer to the committee of the Master Association by that name established pursuant to this Declaration and Article XI of the Bylaws, as further described in Section 7.27 of this Declaration. The Architectural Control Committee shall be the sole purview of the Master Association, and the Sub Associations shall have no rights, duties or obligations with respect to the Architectural Control Committee.

"Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, operating and managing the Development which is to be paid by each Owner as determined by the Association in accordance with this Declaration.

"Association" shall mean and refer to the MIRA Master Association. The Master Association is the owners association comprised of the Owners of every residential and commercial condominium unit in the entire Development, which Owners are all members of the Master Association.

**(a)** All references to "Association" in this Declaration shall mean and refer to the MIRA Master Association unless otherwise specified.

**(b)** Reference(s) to the "MIRA I Sub Association" or the "MIRA II Sub Association" shall refer to one of the Sub Associations, as applicable. References to a "Sub Association" or the "Sub Associations" shall mean and refer to either or both Sub Associations, respectively.

"Association Rules" or "Rules" shall mean and refer to the rules and regulations governing the use of the Development, Units and Common Area which shall be adopted by the Master Association Board from time to time. Only the Master Association shall have the authority to adopt Association Rules.

"Below Market Rate Unit" or "Below Market Rate Units" shall mean and refer to those Residential Unit(s) in the Development that are designated as below market rate units or Affordable Housing Units. There are certain restrictions concerning affordability, use, occupancy, financing, pricing, leasing and resale applicable to the Below Market Rate Units.

"BMR Unit" or "BMR Units" shall mean and refer to one or more of the Below Market Rate Units.

"Board" or "Board of Directors" shall mean and refer to the governing body of the Master Association or a Sub Association, as applicable.

"Budget" or "Association Budget" shall mean and refer to the pro forma operating budget (including reserves) for the Master Association or a Sub Association prepared by the Board of the Master Association or a Sub Association pursuant to Article 4 of this Declaration and applicable provisions of the Bylaws.

"City" shall mean and refer to the City and County of San Francisco, State of California.

"Clementina Street" shall mean that portion of the Common Area so restricted by, and more particularly described in, the Clementina Street Declaration.

"Clementina Declaration" shall mean that certain Amended and Restated Declaration of Access Restrictions and Covenant to Maintain made by Declarant on October 22, 2019, as Document No. 2019-K846842-00 in the Official Records of the City and County of San Francisco.

"Commercial Tenant" or "Commercial Tenants" shall mean and refer to the tenant(s) or lessee(s) of the Commercial Unit or any individual commercial tenant space(s) contained within the Commercial Unit.

"Commercial Unit" shall mean any Unit designated for commercial use, as shown on the Condominium Plan, and as further described in Section 7.2 of this Declaration.

"Common Area" shall mean and refer to the Property and all improvements located thereon excepting therefrom the Units as shown on the Condominium Plan, as further described in Section 2.2(b) of this Declaration.

"Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Development and any reserves for such purposes as found and determined by the Board to be reasonable together with all other sums designated common expenses by or pursuant to the Governing Documents. Reference is made to Article 4 of this Declaration for further details.

"Common Interest" shall mean and refer to the proportionate undivided interest in the Common Area which is appurtenant to each Unit as set forth in this Declaration.

"Condominium" shall mean and refer to an estate in real property as defined in California Civil Code Sections 783 and 4125, consisting of an undivided interest as tenant in common in all or any portion of the Common Area together with a separate fee interest in a Unit and any other separate interests in the Development as may be described in this Declaration, in the Condominium Plan or in the deed conveying the Condominium.

"Condominium Building" or "Building" shall mean and refer to a structure(s) containing Units and related improvements in the Development.

"Condominium Plan" shall mean and refer to the diagrammatic floor plan depicting all Units located in the Development, which identifies each Unit and establishes its dimensions pursuant to Civil Code Sections 4120 and 4285, as further described and shown on the Condominium Plan for the Development entitled "Condominium Plan for MIRA, San Francisco, California", which is referenced in Recital B of this Declaration, or as shown and described on any amendments or supplements thereto.

"CPI" shall mean and refer to the current Consumer Price Index for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco/Oakland area, or any successor entity thereto.

"Davis-Stirling Act" shall mean and refer to the Davis-Stirling Common Interest Development Act, codified in California Civil Code Section 4000 et seq.

"DDA" shall mean and refer to the "Owner Participation/Disposition and Development Agreement," by and between The Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure ("OCII") and Declarant, recorded on May 25, 2017, as Document No. 2017-K456265, in the Official Records of the City and County of San Francisco, State of California.

"Declarant" shall mean and refer to BLOCK ONE PROPERTY HOLDER, L.P., a Delaware limited partnership and such successors and assigns as Declarant may designate pursuant to the procedure set forth in Section 11.5, or as may be otherwise designated pursuant to the procedure set forth in Section 11.5; provided, however, that notwithstanding anything to the contrary herein, in the event that ULLICO acquires title by judicial Foreclosure or trustee's sale pursuant to the ULLICO Mortgage, or by deed in lieu of Foreclosure, then ULLICO shall succeed as Declarant and Declarant shall mean and refer to ULLICO and its successors and assigns.

"Declarant Parties" or "Declarant Party" shall mean and refer to Declarant and its current and future affiliates, and the current and future agents, employees, directors, officers, members, managers, partners, trustees, trust beneficiaries, representative contractors and/or subcontractors, of Declarant.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of MIRA, and any amendments, modifications or supplements hereto.

"Development" shall mean and refer to the Property together with all structures and improvements now or hereafter existing or erected thereon and all property, real or personal, intended for or used in connection therewith.

"Developer Inclusionary Project" shall mean and refer to an inclusionary affordable housing component of the Development consisting of 80 Residential Units in the tower component of the Development and in the adjacent townhome component of the Development, which inclusionary affordable residential units are subject to certain affordability requirements as described in the DDA.

"DRE" means the California Department of Real Estate.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.

"Eligible Mortgagee" shall mean and refer to a First Mortgagee who requests notice of certain matters from the Association in accordance with Section 8.2.

"Exclusive Use Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of an Owner or Owners as set forth in Section 2.2(c) of this Declaration, and shall constitute "exclusive use common area" as defined in California Civil Code Section 4145, and shall include those areas described as Exclusive Use Common Area in Section 2.2(c) of this Declaration. In addition to those portions of the Common Area set aside as Exclusive Use Common Area pursuant to Section 2.2(c) of this Declaration, the following portions of the Common Area designated to serve such Owner's Unit exclusively shall be Exclusive Use Common Area: screens, windows, window boxes, exterior stairs leading exclusively to a Unit, exterior doors leading exclusively to a Unit, door frames and

hardware incident thereto for doors leading exclusively to a Unit, any exterior treatment installed by an Owner pursuant to Association approval, and internal and external telephone wiring or other telecommunication, internet, television, utility, water or sewer Line designed to serve a single Unit but located outside the boundaries of the Unit. The Association, acting on behalf of all Owners, may reserve to an Owner(s), in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title), Exclusive Use Common Area for any purpose not inconsistent with the rights of other Owners under this Declaration. Exclusive Use Common Area may also mean and refer to any portions of the Common Area designated as such by Declarant for vehicle parking, bicycle parking or storage purposes pursuant to this Declaration, Supplemental Declaration or Condominium Plan.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation, or any successor entity thereto.

"First Mortgage" shall mean and refer to any Mortgage which has first priority over all other Mortgages, if any, which encumber, in whole or in part, the same Condominium(s). For avoidance of doubt, First Mortgage shall include the ULLICO Mortgage until such time as the ULLICO Mortgage is fully released of record. For purposes of this definition, the fact that the lien of a First Mortgage is inferior to the DDA, mechanics liens, tax liens, easements and similar limited interests held by government entities, public utilities and the like does not deprive such lien of "first priority" as such term is used herein.

"First Mortgagee" shall mean and refer to any holder of a First Mortgage.

"FNMA" shall mean and refer to the Federal National Mortgage Association, or any successor entity thereto.

"Foreclosure" shall mean and refer to the legal process by which property encumbered by a Mortgage is sold pursuant to California Civil Code Section 2924a et seq., or sale by the Court pursuant to California Code of Civil Procedure Section 725a et seq. and any other applicable laws.

"Governing Documents" shall mean and refer to this Declaration, including the exhibits attached hereto, the Articles, the Bylaws, the Title 7 Master Declaration, the Map, the Condominium Plan, any Supplementary Declaration and any Association Rules as may be established, as any of the foregoing may be amended or supplemented from time to time.

"Including" shall mean "including, without limitation."

"Individual Special Assessment" shall mean and refer to a charge against a particular Condominium made for the purpose of obtaining reimbursement of certain expenditures of the Association pursuant to Section 4.6.

"Invitee" shall mean and refer to any person whose presence in the Development is approved by or is at the request of a particular Owner or Occupant of a Unit, including, without limitation, tenants and the family, guests, visitors, employees, agents, contractors, customers or licensees of Unit Owners or Occupants.

"Line" or "Lines", when used in a context pertaining to a utility service or function, shall mean and refer to wires, cables, pipes, tubes, conduits and ducts.

"Maintain" or "Maintenance" whether capitalized or not, shall mean and refer to "maintain, repair and replace" and "maintenance, repair and replacement," respectively, and shall include, without limitation, taking all actions reasonably necessary to comply with (i) any maintenance manual applicable to an Owner or the Association, (ii) any warranty or limited warranty provided to an owner or the Association, (iii) any manufacturer's warranty or manual provided to an owner or the Association, (iv) commonly accepted maintenance practices of a prudent Owner or Association, and (v) the Title 7 Master Declaration; provided, however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

"Map" shall mean and refer to the recorded final subdivision map for the Property as described in Recital A of this Declaration, and shall also include any amendment thereto. "Map" shall also mean and refer to any subsequently amended parcel maps or final maps for the Property.

"Market-Rate Unit" or "Market-Rate Units" shall mean and refer to those Residential Unit(s) in the Development that are unrestricted by the City or its agencies as to affordability, pricing, financing, resale, rental or leasing. The Market-Rate Units are located in the tower component of the Development and in the adjacent townhome component of the Development. The Market-Rate Units are not subject to any resale or rental restrictions described in the DDA, and are not subject to the Limited Equity Program described in Section 5.05 of the DDA.

"Market-Rate Project" shall mean and refer to the market-rate residential component of the Development consisting of 236 residential condominium units located in the tower component of the Development and in the adjacent townhome component of the Development.

"Master Association" shall mean and refer to the MIRA Master Association.

"Master Association Articles" shall mean and refer to the Articles of Incorporation of MIRA Master Association, a California nonprofit mutual benefit corporation, as amended from time to time.

"Master Association Bylaws" shall mean and refer to the Bylaws of MIRA Master Association, as amended from time to time.

"Materially Damaged" shall mean and refer to any damage for which the cost of repair or reconstruction, as determined by bids solicited and obtained from at least two (2) licensed contractors selected by the Board, is equal to or greater than One Million Dollars ($1,000,000.00) as adjusted by a fraction whose numerator is the CPI last published as of the date of such damage or destruction and whose denominator is the CPI last published as of the date of recordation of this Declaration.

"Member" shall mean and refer to each Unit Owner holding a membership in the Master Association and a Sub Association as herein provided.

**(a)** All Unit Owners shall be Members of the Master Association.

**(b)** Only the Owners of the Residential Market-Rate Units shall be Members of MIRA I Sub Association.

**(c)** Only the Owners of the Below Market Rate Units shall be Members of MIRA II Sub Association.

"MIRA Master Association" shall mean and refer to the MIRA Master Association, a California nonprofit mutual benefit corporation, and its successors and assigns. MIRA Master Association is an

owners association comprised of the Owners of all Residential Units and Commercial Units in the Development. The Owners of all Units in the Development are Members of the MIRA Master Association.

"MIRA I Sub Association" shall mean and refer to the MIRA I Sub Association, a California nonprofit mutual benefit corporation, and its successors and assigns. The MIRA I Sub Association is an owners association comprised of the Owners of the Residential Market-Rate Units in the Development. Only the Owners of the Residential Market-Rate Units in the Development are members of the MIRA I Sub Association. The owners of the Below Market Rate Units are not members of the MIRA I Sub Association.

"MIRA I Sub Association Articles" shall mean and refer to the Articles of Incorporation of MIRA I Sub Association, a California nonprofit mutual benefit corporation, as amended from time to time.

"MIRA I Sub Association Bylaws" shall mean and refer to the Bylaws of MIRA I Sub Association, as amended from time to time.

"MIRA II Sub Association" shall mean and refer to the MIRA II Sub Association, a California nonprofit mutual benefit corporation, and its successors and assigns. The MIRA II Sub Association is an owners association comprised of the Owners of the Below Market Rate Units in the Development. Only the Owners of the Below Market Rate Units in the Development are Members of the MIRA II Sub Association. The owners of the Market-Rate Units are not members of the MIRA II Sub Association.

"MIRA II Sub Association Articles" shall mean and refer to the Articles of Incorporation of MIRA II Sub Association, a California nonprofit mutual benefit corporation, as amended from time to time.

"MIRA II Sub Association Bylaws" shall mean and refer to the Bylaws of MIRA II Sub Association, as amended from time to time.

"Mortgage" shall mean and refer to a mortgage or a deed of trust encumbering a Condominium. For avoidance of doubt, Mortgage shall include the ULLICO Mortgage until such time as the ULLICO Mortgage is fully released of record.

"Mortgagee" shall mean and refer to a beneficiary of, or the holder of, a beneficial interest in a deed of trust as well as a mortgagee.

"Mortgagor" shall mean and refer to a Person who encumbers their Condominium with a Mortgage or deed of trust.

"MOHCD" shall mean and refer to the San Francisco Mayor's Office of Housing and Community Development.

"OCII" shall mean and refer to the Office of Community Investment and Infrastructure of the City and County of San Francisco.

"OCII Affordable Project" shall mean and refer to an OCII-subsidized affordable housing component of the Development consisting of 76 Residential Units in two connected podium buildings, which OCII-subsidized affordable Residential Units are subject to certain affordability requirements and restrictions, as described in the DDA.

"Occupant" shall mean and refer to a Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative.

"Owner" or "Owners" shall mean and refer to the record holder or, if more than one, holders of title of a Condominium in the Development. This shall include any Person holding a fee simple title to any Condominium, including Declarant, but shall exclude certain contract sellers and Persons having any interest merely as security for the performance of an obligation. If a Condominium is sold in a recorded "real property sales contract", as defined in Section 2985 of the California Civil Code, to a purchaser who resides in the Unit, the resident purchaser (rather than the contract seller who is the fee owner) shall be considered the Owner so long as that person resides in the Unit as a contract purchaser.

"Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee or other legal entity.

"Property" shall have the meaning ascribed thereto in Recital A of this Declaration, and shall include all of the real property shown on the Map, together with all structures and improvements now or hereafter existing or erected thereon.

"Public Report" shall mean and refer the official document and permit issued pursuant to the Subdivided Lands Act (Business & Professions Code §§ 11000 et seq.) by the California Department of Real Estate authorizing the offering of the Condominiums for sale to the public.

"Residential Facilities" means all of the recreational, business and shared facilities for the use and enjoyment of the Residential Unit Owners (both Market-Rate Unit Owners and Below Market Rate Unit Owners) and their Invitees, situated within the Common Area, which may include, without limitation, rooftop terrace and related facilities, community use rooms, dining room, lounge areas and related facilities, fitness center and related facilities and children's playroom. The facilities listed above are subject to change. There may be different facilities or amenities not listed above. Owners, Tenants and Invitees of the Commercial Units may have restricted access to and use of the Residential Facilities, as described in this Declaration.

"Residential Unit" or "Residential Units" shall mean and refer to any Unit designated for residential use, as shown on the Condominium Plan and as further described in Section 7.1 of this Declaration.

"Sub Association" or "Sub Associations" shall mean and refer to either or both of the MIRA I Sub Association or the MIRA II Sub Association. The Sub Associations shall have limited powers, duties and obligations under this Declaration and the Governing Documents, and the scope of purview of the Sub Associations shall be restricted as described in this Declaration and the Governing Documents. The Master Association is the primary owners association for the Development, and shall have most of the powers, duties and obligations of the Association under this Declaration and the Governing Documents.

"Special Assessment" shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.5.

"Stormwater Improvements" shall collectively mean those improvements in the Development constructed in accordance with applicable building codes which are intended to function as part of a storm water drainage and quality system. The term "Stormwater Improvements" does not include any storm water improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

"Stormwater Plan" shall mean the document describing the Stormwater Improvements for the Development and maintenance and operation measures related thereto, and including any subsequent amendments or modifications thereto.

"Supplementary Declaration" shall mean a declaration of covenants, conditions and restrictions, or similar instrument, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property and thereafter by the Association to do any or all of the following: (a) make modifications or adjustments to the description of the Property to reflect Declarant's development plan or any lot line adjustments, parcel maps and final subdivision maps and/or conditions or requirements imposed by governmental agencies, (b) identify areas referenced in this Declaration to be maintained by the Association or Owners and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner, (c) make such other complementary additions and/or modifications necessary to reflect the different character of improvements on the Property, (d) impose additional covenants and restrictions on the Property, (e) conform this Declaration or any previously recorded Supplementary Declarations to applicable laws or any conditions of approval imposed by any governmental agency or governmental entitlements, (f) conform this Declaration and other Governing Documents to the requirements of any state or federal agencies or institutional lenders, and/or (g) make corrections to the provisions of this Declaration or any previously recorded Supplementary Declaration.

"Title 7 Master Declaration" shall mean and refer to that certain Master Declaration for Title 7 and Dispute Resolution for MIRA, to be recorded against the Development in the Official Records of the City and County of San Francisco, State of California, including any supplement, amendment or notice of addition thereto. Reference is made to said Title 7 Master Declaration for further details concerning its terms and conditions.

"ULLICO" shall mean and refer to The Union Labor Life Insurance Company, a Maryland corporation, on behalf of its Separate Account J, and its successors and assigns.

"ULLICO Mortgage" shall mean that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Declarant, as trustor, to Chicago Title Insurance Company, as trustee, for the benefit of ULLICO, dated as of May 25, 2017 and recorded May 25, 2017 as Document No. 2017-K456271-00 in the Official Records of the City and County of San Francisco, and all past and future amendments, modifications and supplements thereof.

"Unit" shall mean and refer to the elements of a Condominium which are not owned in common with all Owners or by the Association, the boundaries of which are shown and more particularly described in the Condominium Plan, in deeds conveying Condominiums and in this Declaration, as further described in Section 2.2(a) of this Declaration.

"Unit Designation" shall mean and refer to the number, letter or combination thereof or other official designation of each of the Units as shown on the Condominium Plan.

## ARTICLE 2
## DESCRIPTION OF DEVELOPMENT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

**Section 2.1 Description of Development.** The Development consists of the Property, together with the Condominium Building(s) and all other improvements located thereon. As of the date of this Declaration, the Development contains three hundred ninety two (392) residential condominium

units and up to eight (8) commercial condominium units. Reference is hereby made to the Condominium Plan for further details concerning the Development.

As further described in this Declaration, two or more Commercial Units may be combined, or the physical boundaries of the Commercial Units may be adjusted, by the Commercial Unit Owners in order to create functional commercial space(s) that will serve the intended purpose of such Commercial Unit Owners. Two or more Commercial Units may together serve as a single commercial space. The Development may contain a larger or smaller number of commercial spaces than Commercial Units shown on the Condominium Plan. Commercial Units that have previously been combined may be divided and returned to their original configuration, or reconfigured, combined or adjusted to create a new configuration or number of commercial spaces.

**Section 2.2** **Division of the Development Areas.** The Development is divided as follows:

**(a)** **Units.** Each of the Units, as separately shown, numbered and designated on the Condominium Plan, consists of the space bounded by and contained within the following boundaries: The upper boundary shall be the unfinished surface of the bottom of the ceiling and the lower boundary shall be the unfinished surface of the top of the floor. The side boundaries of the Residential Units shall be the unfinished interior surfaces of the perimeter concrete walls and glazing, the centerline of corridor walls, and the centerline of demising walls between Units. Paint, paper, paneling, wall boards, sheet rock, outlets, stain, tile, carpet, hardwood floors and other finishes are considered part of the Unit. Each Unit includes the portions of the Condominium Building in which the Unit is located so described as well as the airspace so encompassed; provided that the Unit does not include those areas and those things which are herein defined as "Common Area." In addition, each Unit includes any air heating, air conditioning, HVAC and water heating equipment, water and sewer lines, lighting fixtures, and outlets thereof wherever located, which are part of a discrete and complete system intended to serve only such Unit. A Unit does not include any bearing wall or other structural member necessary to the support or adequate rigidity of any portion of the Common Area or any other Unit even if such improvements may be shown on the Condominium Plan within the boundaries of a Unit, except that any finished surface of such bearing wall or structural member which faces a Unit shall be a part of such Unit. A Unit also does not include any plumbing and mechanical voids and shafts and related Lines and improvements serving any other Unit, more than one Unit or serving the Common Area even if such plumbing and mechanical voids and shafts and related Lines and improvements may be shown on the Condominium Plan within the boundaries of a Unit. Each Unit is subject to such encroachments as are contained in the Condominium Building in which the Unit is located whether the same now exists or may be later caused or created in any manner referred to in Section 6.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial accordance with the original plans and specifications therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in such deed or plan, regardless of settlement or lateral movement of the Condominium Building in which the Unit is located and regardless of minor variance between the boundaries shown on the plan or deed and those of that Condominium Building. Unless otherwise specified in this Declaration, areas within a dropped ceiling that contain utility facilities that serve two or more Units are Common Area and not part of the Unit. An Owner of adjacent Residential Units shall have an easement to connect such adjacent Units, subject, however, to the terms and conditions of Sections 7.10, 7.15 and 7.27 of this Declaration.

**(b)** **Common Area.** The Common Area shall consist of the entire Development excluding the Units, and may include, without limitation: land; landscaping (including any garden areas); garage areas; parking areas; elevators; lobby; trash rooms; bearing walls; decks, terraces, balconies; exterior walls; columns; beams; sub-floors; unfinished floors; roofs; foundations; stairways not located within a Unit; corridors, walkways and hallways which provide access to Units and other Common Areas;

life safety equipment (not located within a Unit); those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations lying within the Development or contained within and immediately surrounded by that portion of any structure or space which is defined herein as a part of the Common Area (as required to provide power, light, telephone, cable television, gas, water, sewage, drainage, heat and air conditioning service) except that any air heating, air conditioning, HVAC and water heating equipment and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be a part of such Unit; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Unit; and any common central radio and/or television antenna system, cable television system, satellite dish or other central television reception system installed by Declarant or the Master Association and designated for shared use by the Unit Owners. Any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof that serves two or more Units or the Common Area shall be deemed Common Area, even if such item is located within the airspace or boundaries of a Unit. Common Area shall include those portions of the streets and sidewalks, and improvements and landscaping thereon, that are located on the Property.

(c) **Exclusive Use Common Area.** Portions of the Common Area shall be referred to as "Exclusive Use Common Area" and are hereby set aside and allocated for the exclusive use of one or more, but fewer than all, Owners, as may be shown and described on the Condominium Plan or described in this Declaration. Reference is made to Section 1.1 of this Declaration for additional detail. Said Exclusive Use Common Area also consists of an assignment or easement for exclusive use of deck areas (D-2B, D-2G, D-32E-1, etc.) as may be specifically designated on the Condominium Plan, the deed conveying the Condominium, this Declaration, or a grant or assignment by Declarant or the Master Association as an appurtenance to any particular Unit.

Such Exclusive Use Common Areas shall be appurtenant to applicable Unit(s) as set forth above. Except as provided in Sections 5.1 and 5.2 of this Declaration, the repair and maintenance of the Exclusive Use Common Areas shall be the responsibility of the Owner of the Unit to which such Exclusive Use Common Area(s) are appurtenant.

(d) **Owners' Interest and Rights in Common Area.** Each Owner shall have, as appurtenant to that Owner's Unit, a membership in the Master Association and an undivided interest in the Common Area equivalent to that shown in the Condominium Plan. Each Owner of a Below Market Rate Unit shall also have, as appurtenant to that Owner's Unit, a membership in the MIRA II Sub Association. Each Owner of a Market-Rate Unit shall also have, as appurtenant to that Owner's Unit, a membership in the MIRA I Sub Association. The ownership of each Condominium shall include both a Unit and an undivided interest in the Common Area as described in this Declaration. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected and of all of the Mortgagees of First Mortgages covering the Condominiums affected as expressed in an amended Declaration; provided that if any such Mortgagee of a First Mortgage does not respond within sixty (60) days of a request by the Master Association for consent to alter the Common Area, then that Mortgagee's consent shall not be required. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use all Common Area (other than Exclusive Use Common Area which use is governed by Section 2.2(c)) in accordance with the purposes for which such Common Area is intended and in accordance with all Association Rules, so long as such use does not hinder the exercise of or encroach upon the rights of any other Owners, including another Owner's rights to Exclusive Use Common Area as hereinafter described.

(e) **No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above and

cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed. Each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Condominium or to the fee title to the Unit.

**Section 2.3 Rights of Entry and Use.** The Units and the Common Area (including the Exclusive Use Common Area) shall be subject to the following rights of entry and use:

**(a)** The nonexclusive rights of each Owner for ingress, egress and support in, to and throughout the Common Area, subject to the rights of other Owners in the Common Area and Exclusive Use Common Areas, and subject to the terms of this Declaration, the Clementina Declaration, and the Association Rules.

**(b)** The right of the Master Association's agents or employees to enter any Unit to cure any violation or breach of the Governing Documents, provided that the Master Association has complied with the notice and hearing requirements of the Governing Documents (except in the case of an emergency), and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Master Association.

**(c)** The access rights of the Master Association or Sub Association to enter into or upon any Unit or the Common Area to maintain, repair or replace improvements or property located in the Common Area that is the responsibility of the Master Association or Sub Association after forty-eight (48) hours' notice to the affected Owner(s) (except in the event of an emergency, in which event no prior notice shall be required).

**(d)** The rights of the Owners, the Master Association, and the Declarant to install, maintain, repair or replace utilities, telecommunication, internet service and related facilities as described in Article 6 of this Declaration.

**(e)** The encroachment rights described in Section 6.5 of this Declaration.

**(f)** The rights of the Declarant during the construction, sales and marketing period described below, and as described in Section 11.4 of this Declaration. Such rights of Declarant shall include, without limitation, the right of Declarant or Declarant Parties and Declarant's Invitees, agents guests, potential buyers and lessees to enter on any portion of the Development to construct and sell or lease the improvements that Declarant intends to construct on any portion of the Property, 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 Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld or delayed.

**(g)** The rights of Owners to make improvements or alterations authorized by Civil Code Section 4760, subject to Sections 7.10 and 7.27 of this Declaration and other applicable provisions of this Declaration and the Bylaws.

**(h)** Subject to Sections 3.9, 3.10, 3.13, 4.18 and 6.15, and subject to other rights reserved to Declarant in this Declaration, the right of each Owner to ingress and egress through, and use of, the Common Area.

**(i)** Notwithstanding anything herein to the contrary, all rights of entry and uses of Clementina Street pursuant to this Declaration, whether by Declarant, the Association, either or both of

the Sub Associations or one or more Owners, shall be consistent with the Clementina Declaration, and in the event of a conflict between this Declaration and the Clementina Declaration, the Clementina Declaration shall prevail.

**Section 2.4** **Partition Prohibited.** The Common Area shall remain undivided as set forth above. Except as otherwise provided in Civil Code Section 4610, no Owner shall bring any action for partition of a Unit or of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Development and each Owner, by acceptance of a deed to his Unit, shall be deemed to have waived and abandoned, for himself, his successors and assigns (whether by deed, gift, devise, Foreclosure or operation of law), the right to bring or maintain any such action for partition. Judicial partition by sale of a single Unit owned by two or more Persons and division of the sale proceeds is not prohibited hereby but partition of title to a single Unit is prohibited.

**Section 2.5** **Subdivision Prohibited.** Neither the Association nor any Owner shall subdivide or apply to any appropriate jurisdiction to subdivide the Common Area without the express written consent of all of the Owners and of all the Mortgagees of First Mortgages encumbering any Unit Condominium within the Development and no Owner shall cause or permit the further subdivision of tbe airspace within such Owner's Unit. This Section 2.5 shall not apply to any subdivision or related activities of Declarant in connection with the completion or build-out of any portion of the Development, including, without limitation, the Commercial Unit and related Common Area.

**Section 2.6** **Delegation of Use**. Any Owner may delegate, subject to and in accordance with the Governing Documents, such Owner's right of access to and use of the Common Area and facilities to the members of such Owner's family, such Owner's tenants, or contract purchasers who reside in such Owner's Unit; provided that no such delegation shall relieve such Owner of its duties and obligations under the Governing Documents.

**Section 2.7** **Reservation of Access and Construction Easements.** Declarant hereby reserves to itself, its successors and assigns, nonexclusive easements for ingress and egress and construction activities over the Common Area. The rights retained by Declarant and Declarant Parties over the Common Area shall continue to apply and be effective until such time as Declarant has completed all construction and related activities and sales, leasing and marketing activities, and conveyed or leased all of its interest in the Development, provided that Declarant's rigbts shall pass to its successors and assigns as provided in this Declaration. The rights retained by Declarant and Declarant Parties include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences, walls 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 Common Area as 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, wall or otherwise. Tbe rights reserved herein by Declarant connected with construction activities, including marketing, leasing and sales, shall be deemed to include the right to generate the customary noise, vibration, odors, fumes, exhaust, dirt, dust, and light associated with such activities. The rights reserved in this paragraph by Declarant connected with construction and development activities, marketing, leasing and sales, shall automatically terminate on the date that is five (5) years after the close of escrow for the sale of the final Unit in the Development by Declarant or its successor.

**Section 2.8** **Construction Activity.** Each Owner acknowledges that: (i) the construction of the Development will occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Unit may be disturbed as a result of the noise, odors, dust, fumes, exhaust, dirt, lights, vibrations,

and other effects of construction activities; (iii) construction activities may occur during normal business hours, early in the morning, in the evening and on weekends and holidays; and (iv) the disturbances will continue until the completion of the construction on the Property and all improvements thereon. Each Owner and/or occupant in the Development is hereby put on notice that until all Units and improvements in the Development are constructed, marketed, sold or leased, there will be ongoing construction activities in and around the Property, and in the vicinity of the Property and adjacent streets and sidewalks. Such activities may cause noise, vibration, odors, dust, dirt, exhaust, fumes, lights, and access to and use of the Common Area and surrounding areas for construction equipment, machinery, materials, vehicles, personnel, staging, and the storage and transportation for construction workers and supplies.

**Section 2.9 Noise Transmissions; Vibration.** The Development has been designed to meet the acoustical building code standards in effect at the time the Development was permitted. The standards establish minimum performance criteria and do not eliminate all noise transmissions and vibrations. Occupants will hear noise and experience vibration from other Units and Common Areas in the Development, noise and vibration from the Commercial Units, and noises and vibrations from outside the Condominium Building and adjacent and nearby properties, including, but not limited to noise and vibration from both recorded and live music, televisions, stereo and other audio equipment, foot traffic from other Units and the Common Area, voices, noise generated by employees, customers, guests and clients of the Commercial Units, noises generated by use of the Common Area (including, without limitation, the garage and garage doors and gates, loading docks and related facilities, parking areas, lobbies, elevators, and Residential Facilities), elevators, stairwells, kitchen equipment, HVAC systems, plumbing fixture operations, fans, garage doors, equipment and machinery located on roof areas, in the garage, and above ceilings in the Condominium Building, doors, trash and recycling disposal, trash chutes, car, truck and bus traffic, delivery trucks, sirens, trains, public transportation, aircraft noise and other street noises, including noise from the Bay Bridge. The Development is a mixed-use project containing different commercial uses along with the residential condominiums, and the residential unit owners and occupants in the Development will hear noise and experience vibration from the sources described herein this Section as well as other noises from other sources and adjacent and nearby properties. Occupants will also hear and experience noise and vibrations in connection with the completion of construction of the Units and Common Areas.

**Section 2.10 Mixed-Use Project; High-Density Urban Environment; Nearby Commercial Facilities and Activities.**

**(a)** The Residential Units are part of a mixed-use Development which may also include commercial, retail, office, restaurant, cafe and entertainment-type uses, including live music and other performances. Such commercial uses will attract customers, clients, guests, vendors, employees, delivery services, garbage, recycling and compost services, and other services to the overall Development, including areas adjacent to the residential units and common areas, the garage and parking areas, the street and sidewalk in front of the Condominium Building and lobby areas, and at the exterior of the Condominium Building. Such commercial uses may also produce noise, vibrations, smoke, steam, exhaust and odors which may be experienced from the Residential Units and/or other portions of the Development. Such commercial uses may have kitchens with food preparation, cooking facilities, exhaust fans and related equipment. Such commercial uses may have outdoor seating areas and outdoor lighting. Such commercial uses will have commercial signage, both electrified and non-electrified, and commercial signage both lighted and non-lighted. Such commercial uses may generate lines of people and become crowded. As the Residential Units are part of a mixed-use project containing commercial uses, the Residential Unit Owners shall be subject to such issues and others inherent in such mixed-use projects.

**(b)** The Development is located in a high density urban environment with a great range of uses of the surrounding properties, including commercial, retail, restaurant, entertainment and live music venues, sporting events, hotel, office, transportation systems, buses, trains and hospitals. The Development is subject to urban environmental and traffic noise and vibration from city streets, highways, public transportation, Muni, buses, street cars, trains and trucks, as well as light pollution from various sources. The Development is subject to a range of persons, including homeless/vagrants, who will walk and loiter on the streets and sidewalks surrounding the Property. The Development is nearby the Transbay Transit Center which is a regional transit hub and may include a wide variety of different types of transit, including, without limitation, busses, trains, cars and related facilities. Such different transportation may cause noise, vibrations, odors, vehicular and pedestrian traffic, and other impacts from such areas and related facilities and activities.

**Section 2.11 Parking in Development.**

**(a) Parking License Agreement; Parking Fees; Valet Parking Only.**

**(1) Parking Licenses; Limited Number of Parking Licenses.** Parking is not automatically provided with each Unit in the Development. There may not be parking available for every Owner or occupant that desires to park in the Development. Subject to availability, an Owner or Occupant that desires to obtain the right to have a vehicle parked in the Development shall be required to enter into parking license agreement with Declarant or the Master Association. An Owner or Occupant that enters into a parking license agreement shall receive a license providing the right to have an approved vehicle parked in the garage of the Development by the valet parking service, which right shall be subject to the terms and conditions of such parking license agreement, and shall be further subject to rules and regulations of the Master Association and the valet parking service provider. Such parking license and the right to park shall be subject to reasonable fees imposed by Declarant or the Master Association, which fees may be increased or decreased from time to time. A limited number of parking licenses will be available for the Development, and it is anticipated that all available parking licenses may be issued, such that there may be no more parking licenses available for other Owners or Occupants of the Development. If all available parking licenses have been issued, then an Owner or Occupant desiring to obtain a parking license may not be able to receive a parking license from Declarant; provided that a parking license may be available for purchase from another Owner as described in Section 2.11(e) below. If an Owner does not enter into a parking license agreement, then such Owner shall not have any right to have a vehicle parked in the garage of the Development, and any parking by such owner shall be subject to availability, on a first come-first served basis, and subject to any fees charged for parking. All parking in the Development shall be subject to the rules and regulations of the Master Association. An Owner has the right to authorize its Tenant or other Occupant of the Owner's Unit to be a party to a parking license agreement (but only during an authorized lease, tenancy or occupancy in compliance with this Declaration); provided, that the Owner shall remain ultimately liable for compliance with the terms of this Declaration with respect to such license, and such arrangement shall be subject to the reasonable requirements of the Master Association. Parking licenses for the BMR Units are subject to the BMR Parking Policy attached hereto as **Exhibit D**.

**(2) Valet Parking Only; No Self-Parking.** Parking in the garage of the Development will be provided by a valet parking service operator. An Owner, Occupant or Invitee that desires to have a vehicle parked in the Development shall provide the vehicle to the valet service staff, and the valet service staff will park the vehicle. Self-parking of a vehicle in the Development by an Owner, Occupant or Invitee shall not be permitted. The particular location or space within the garage where a vehicle may be parked shall be determined by the valet parking operator. An Owner, Occupant or Invitee shall not be entitled to any particular location or parking space in the garage. Owners shall not receive an easement for the exclusive use of any particular parking space in the garage of the

Development. Parking of car share vehicles, motorcycles or vehicles with valid disabled/handicapped placards shall be subject to the Master Association Rules.

(3) **Motorcycle Parking**. In the event that motorcycle parking is provided in the Development, the provisions of Section 2.11(a) - (k) shall apply to such motorcycle parking; provided that the valet parking staff may not park a motorcycle, but direct the driver to the designated motorcycle parking area. As with vehicle parking, motorcycle parking is not automatically provided with each Unit in the Development, and is subject to availability. Motorcycle parking will not be available for every Owner or Occupant that desires to park a motorcycle in the Development. Subject to availability, an Owner or Occupant that desires to obtain the right to park a motorcycle in the Development shall be required to enter into a motorcycle parking license agreement with Declarant or the Master Association. If an Owner or Occupant obtains a license for vehicle parking pursuant to Section 2.11, then that Owner or Occupant may park a vehicle or motorcycle under that license; provided that only one (1) vehicle or one (1) motorcycle may be parked under that vehicle license. If an Owner or Occupant obtains a license for motorcycle parking pursuant to Section 2.11, then such license may be used only for motorcycle parking. Subject to availability, an Owner or Occupant may obtain more than one vehicle and/or motorcycle parking license.

(4) **Parking for Guests of Owners and Occupants and Invitees**. If parking is provided to guests of Owners and Occupants of the Development or other Invitees, fees for such parking shall be set by the Declarant during such time as Declarant controls the parking in the Development, and then by the Master Association, consistent with prevailing market rates for parking in the vicinity of the Development.

(5) **Market-Rate Units and Below Market Rate Units Parking Pools**. As of the date of this Declaration there are 236 parking licenses designated for Market Rate Unit Owners (the "Market Rate Parking Licenses") and 99 parking licenses designated for the Below Market Rate Units (the "BMR Parking Licenses"). If there are no designated parking licenses available in a Unit Owner's designated parking pool, then such Owner may not be able to obtain a parking license. In such event, such Owner may not be permitted to park in the Development until such time as parking may become available in such Owner's designated parking pool.

(A) **Unused BMR Parking Licenses**. In the event there are unused BMR Parking Licenses, they shall be subject to the BMR Parking Policy attached hereto as **Exhibit D**.

(B) **Unused Market Rate Parking Licenses** In the event there are unused Market Rate Parking Licenses, then the parking garage operator, with the approval of the Master Association, shall have the right to temporarily rent or lease such unused parking for short or long term parking to Owners, Occupants or Invitees of the Development, or the general public; provided that if a qualified Market Rate Unit Owner requests to use an unused Market Rate Parking License, then after a reasonable period of time and subject to other requirements and fees imposed by the Association and parking operator, such qualified person shall be provided a license from the pool of designated Market Rate Parking Licenses, subject to fees and costs imposed by the Master Association.. If there are more qualified Market Rate Unit Owners that desire to access parking than there are available Market Rate Parking Licenses, the Master Association shall be permitted to utilize a wait list or lottery system to make such Market Rate Parking Licenses available to qualified Owner(s)

(b) **Limited Parking Availability**. There may be fewer parking spaces available in the garage of the Development than there are Owners, Occupants, Invitees, visitors or other persons that desire to park in the Development. In the event that the parking garage becomes full or available parking in the garage is otherwise utilized, then, except for parking pursuant to a valid parking license in good

standing, parking may not be available for Owners, Occupants, Invitees, visitors or other persons that desire to park in the Development. In such event, such persons may not be permitted to park in the Development until such time as parking may become available.

(c) **Suspension of Parking Rights**. Parking in the Development shall be subject to the rights of Declarant or the Master Association to temporarily suspend parking rights, upon reasonable notice, in order to accommodate any construction, maintenance or repairs of the garage, parking areas or other portion of the Development and related improvements. Declarant or the Master Association shall also be permitted to temporarily suspend the parking rights of any person for (i) violation of a parking license agreement, (ii) violation of any Master Association parking rules and regulations, (iii) failure to pay parking fees (including, without limitation, assessments, penalties or fines imposed by the Master Association), or (iv) failure to comply with this Declaration (collectively "Parking Violation"). During such time as an Owner's parking rights are suspended, the Owner's parking license fees (and any fines, penalties and related costs) shall continue to accrue, until such time as the Owner informs the Association property manager that such Owner's parking right may be utilized by the Association or parking operator on a temporary basis for parking for other persons. Once the Parking Violation is cured by the Owner, including, without limitation, payment in full of any parking fees, assessments, penalties or fines that have accrued in connection with an Owner's parking license, such suspension shall be lifted and the parking rights restored within seven (7) days after confirmation by Declarant or the Master Association that the transferee Owner is in good standing with respect to parking. Each Owner hereby acknowledges that such activities of the Declarant or the Master Association, or a Parking Violation that has not been cured, may temporarily prevent or impair an Owner's right to have a vehicle parked in the Development and may constitute an inconvenience or nuisance, and each Owner on behalf of itself and any Occupants of its Unit, hereby releases the Declarant and the Master Association from any claims with respect to such matters.

(d) **Transfer of Parking License to New Owner upon Transfer of Unit**.

(6) Upon transfer of a Market-Rate Unit by an Owner, the transferor Owner's parking license shall be automatically transferred to the transferee Owner and inure to the benefit of the new Owner so long as all of the following requirements are met: (A) such transferee Owner shall enter into a new parking license agreement between such Owner and Declarant or the Master Association, (B) such transferee Owner shall pay any fees requested by Declarant or the Master Association related to parking in the Development, which may include, without limitation, any administrative fees related to the transfer of parking, and any past due parking fees or other amounts of the transferor Owner that remain unpaid, (C) such transferee Owner shall cure any outstanding Parking Violations, and (D) such transferee Owner shall provide all reasonably requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to reasonable requirements, documentation and fees requested by Declarant or the Master Association.

(7) If such transferee Market-Rate Unit Owner neglects or refuses to enter into a new parking license agreement or to comply with the above requirements, then the parking right that was transferred to such transferee Owner along with the transferor Owner's Condominium shall be suspended until such time as such new Owner enters into a parking license agreement and complies with the above requirements to the satisfaction of Declarant or the Master Association. During such suspension of parking rights, the Declarant or Master Association, as applicable, shall have the right to utilize any parking availability created thereby to provide short or long term parking, as determined by the Declarant or the Master Association, as applicable, in its sole discretion, and such new Owner whose parking rights are suspended shall have no right to receive any income or compensation related thereto; provided that once the above requirements have been satisfied, then the transferee Owner's parking right shall be

restored within seven (7) days after confirmation by Declarant or the Master Association that the transferee Owner is in good standing with respect to parking.

(8) With respect to BMR Units, in the event there is a BMR Parking Waitlist as described in the BMR Parking Policy attached hereto as **Exhibit D**, then upon transfer of a Below Market Rate Unit to a new Owner, a parking license of the transferor Owner shall not automatically be transferred to the transferee Owner, and such transferor Owner's parking license shall go into the pool of available BMR Parking Licenses available to those BMR Unit Owners on the BMR Parking Waitlist and be shall be subject to the procedures described in **Exhibit D**. Subject to the foregoing, the requirements for such transfers of parking licenses to new Owners described in Section 2.11(d)(1) and (2) above shall otherwise apply to such transfer of a BMR Parking License. In addition to the above requirements in this Section 2.11(d)(3), MOHCD or OCII shall have the right to impose conditions and other requirements on the transfer of a parking license by an Owner of a Below Market Rate Unit Owner to the transferee Owner of that Below Market Rate Unit.

(e) **Sale or Lease of Parking License Between Existing Unit Owners**. If an Owner desires to sell or lease such Owner's parking rights under an existing valid parking license agreement to an existing Owner of a Unit in the Development, then such sale or lease shall be permitted so long as the following requirements are met: (A) the two Owners sign an agreement in a form approved by Declarant or the Master Association, as applicable, and complete any documents requested by Declarant or the Master Association in connection with such sale or lease of the parking license, (B) such transferee Owner or lessee shall enter into a new parking license agreement between such Owner and Declarant or the Master Association, (C) such transferee Owner shall pay any fees requested by Declarant or the Master Association related to parking in the Development, which may include, without limitation, any administrative fees related to the transfer of parking, and any past due parking fees or other amounts of the transferor Owner that remain unpaid, and (D) such transferee Owner shall provide all reasonably requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association. Upon completion of such transfer, the Master Association shall change its records to reflect the transfer to the transferee Owner. The Master Association shall retain in its records the written agreement of the two Residential Owners. An Owner shall not be permitted to sell, assign or lease such Owner's parking rights to any non-Owner of a Unit in the Development.

(1) **Market-Rate Units**. If a Market-Rate Unit Owner desires to sell or lease such Owner's parking rights under an existing valid parking license agreement to an existing Owner of a Unit in the Development, then such sale or lease shall be permitted so long as the following requirements are met: (A) the two Owners sign an agreement in a form approved by Declarant or the Master Association, as applicable, and complete any documents requested by Declarant or the Master Association in connection with such sale or lease of the parking license, (B) such transferee Owner or lessee shall enter into a new parking license agreement between such Owner and Declarant or the Master Association, (C) such transferee Owner shall pay any fees requested by Declarant or the Master Association related to parking in the Development, which may include, without limitation, any administrative fees related to the transfer of parking, and any past due parking fees or other amounts of the transferor Owner that remain unpaid, and (D) such transferee Owner shall provide all reasonably requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association. Upon completion of such transfer, the Master Association shall change its records to reflect the transfer to the transferee Owner. The Master Association shall retain in its records the written agreement of the two Residential Owners. An Owner shall not be permitted to sell, assign or lease such Owner's parking rights to any non-Owner of a Unit in the Development.

(2) Below Market Rate Units. **Any proposed sale or lease of an existing BMR Parking License agreement by an Owner of a BMR Unit shall be subject to prior review and approval by MOHCD or OCII, which may restrict or prohibit any such proposed sale or lease, and shall be subject to the procedures in Exhibit D attached hereto. If MOHCD or OCII approves a proposed sale or leasing of an existing parking license by an Owner of a BMR Unit, then such sale or lease shall only be permitted to another Owner of the Development. An Owner of a BMR Unit shall not be permitted to sell or lease such Owner's parking rights to any non-Owner of a Unit in the Development.**

**(f) Electric Vehicle Charging Stations.** There may be a limited number of parking spaces available in the Development with electric vehicle charging stations. Such spaces shall be subject to availability, and may not be available for an Owner, Occupant or Invitee who wishes to have his or her car charged. A person who desires to have an electric vehicle charged may be charged a fee to have the vehicle charged, as determined by the Master Association. Once such vehicle is charged, the vehicle may be moved to another location within the garage of the Development by the parking garage operator and valet service staff. All use of electric vehicle charging stations and any related parking spaces shall be subject to rules and regulations of the Master Association. In the event that the Board determines to replace any electric vehicle charging stations or related equipment, or install any new electric vehicle charging stations, the Board shall determine in its discretion where to install such stations and related equipment, who shall pay for the costs of such stations and equipment and how much to charge any users of such stations and equipment.

**(g) Car Share Parking in Garage.** A limited number of parking spaces in the garage of the Development may be designated for use by a car share company or companies. Owners and occupants of the Development, as well as other third parties and members of the general public may use the car share parking spaces, subject to reasonable rules imposed by the Master Association. Such users of the car share parking spaces may have access to and use of portions of the Development, including, without limitation, garage areas, hallways, stairways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with use of such car share parking spaces. Use of the car share parking spaces shall be determined by Declarant in its sole discretion so long as Declarant owns any Unit in the Development, and thereafter by the Board; provided that Declarant may assign the right to determine the use of the car share spaces to the Master Association at an earlier date.

**(h) Disabled (Accessible) Parking Spaces.** There may be a limited number of designated parking spaces available in the Development for disabled persons, whether Owners, Occupants or Invitees. Such spaces shall be subject to availability, and may not be available to an Owner, Occupant or Invitee, even if such person has a valid disabled parking placard. A person who desires use of such designated disabled parking space may be required to provide evidence of disabled status by distinguishing license plate or placard issued by the California Department of Motor Vehicles as a condition to having such person's vehicle parked in a designated disabled parking space. In no event shall the Declarant or the Master Association be held liable if a disabled person is unable to park or have a vehicle parked in a parking space designated for disabled persons. The particular parking space(s) or exact location in the garage of the Development where a disabled person's car may be parked shall be determined by the valet parking operator, and no person shall be entitled to have his or her vehicle parked in any particular disabled parking space or location in the garage.

**(i) Parking for Commercial Units and Commercial Invitees.** Declarant, so long as Declarant owns any portion of the Development or Property, shall have the unilateral right in its sole discretion to enter into license agreements providing the right to park to the Owners, occupants and Invitees of the Commercial Units in the Development or otherwise sell, lease, grant assign or otherwise provide rights for the Owners, occupants and Invitees of the Commercial Units to park in the

Development. Declarant shall, upon providing such right to park in the development to a Commercial Unit through a parking license agreement or otherwise, designate such parking license or rights in the records of the Master Association. The Master Association shall not have the authority to rescind any parking rights, licenses, easements or assignments or agreements related thereto established or entered into by Declarant without the prior written consent of the holder of such parking right, license, easement, assignment or agreement.

(j) **Commercial Parking Operator; Valet Parking Service Provider; Parking for General Public; Commercial Units**. Declarant, so long as Declarant owns any portion of the Development, shall have the unilateral right in its sole discretion to make arrangements for and enter into agreements with third party commercial parking service operator(s) to provide parking and related services in the garage of the Development, which parking services may include, without limitation, parking for Owners, Occupants and Invitees of the Residential Units and Commercial Units, Commercial Tenants, valet parking service, short-term and long-term parking for adjacent properties, parking for commercial businesses, parking for car share providers, electric vehicle charging services, parking by other users and the general public, loading dock services, parking and vehicle related services, and other use of the parking areas and other portions of the garage of the Development (collectively, "Parking Uses") as determined Declarant in its sole discretion.

Any parking rights that have been granted, assigned or licensed to a Commercial Unit Owner may, with the permission of such Commercial Unit Owner, be used by the Commercial Tenants, employees, customers, guests or other Invitees of the subject Commercial Unit(s).

Parking for guests of Residential Unit Owners or Occupants (i) shall be subject to availability, (ii) may not be available at all times, (iii) may be subject to parking charges imposed by the Board or parking garage operator, which may change from time to time, and (iv) shall be subject to Master Association Rules concerning parking in the Development, which may change from time to time.

(k) **Declarant Authority Over Parking and Related Common Area**. Declarant, so long as Declarant owns any portion of the Development or the Property, shall (i) have the unilateral right in its sole discretion to designate and utilize any portion of the Common Area garage, driveway(s), Clementina Street and related areas of the Development for parking purposes, (ii) have the unilateral right in its sole discretion to enter into license agreements providing the right to park in the Development, and (iii) have the unilateral right in its sole discretion to sell, lease, grant, license, assign or otherwise provide easements or other rights to park in the Development (collectively "Dispose"). Declarant's rights shall include, without limitation, the right to designate any portion of the garage of the Development as Exclusive Use Common Area for parking purposes, and the right to Dispose of it as described above. Declarant shall, upon exercising any of its rights to provide parking licenses or otherwise Dispose of parking in the Development, inform the Master Association and designate such parking licenses or other disposition of parking rights in the records of the Master Association. Until such time as Declarant assigns its rights to provide parking licenses or otherwise Dispose of parking in the Development to the Master Association in writing, Declarant shall have the sole right and authority to provide any parking licenses or otherwise Dispose of parking in the Development, which right shall include, without limitation, the right of Declarant to provide parking in the Development to any Person without any license agreement and without charging any fees or parking charge. Upon such assignment by Declarant, the Master Association shall have all of the rights and obligations of Declarant described in this section, subject to the terms of such assignment(s).

(1) Declarant shall have control over the gates to the parking garage, and the hours in which the gates are to be opened and closed, until such time as all sales of condominiums in the

Property have been completed or until Declarant assigns or conveys the parking garage and/or gates to the Master Association.

(2) Section 2.11 shall be broadly construed to provide Declarant the right and without the consent of the Master Association or Owners to enter into contracts, leases, licenses, agreements, conveyances, transfers, easements or otherwise make arrangements for all parking in the garage for Owners, occupants and Invitees of both Residential Units and Commercial Units in the Development, as well as short-term or long-term parking for adjacent properties, the general public, commercial businesses or other users, parking on Clementina Street and other Parking Uses, in any manner determined by Declarant in its sole discretion for so long as Declarant owns any portion of the Development or Property or until assignment. Upon conveyance of Declarant's final Condominium or other interest in the Property, Declarant's rights reserved in this Section 2.11 shall automatically be assigned to the Master Association. The rights described in this Section 2.11(k) shall apply to both vehicle and motorcycle parking.

**Section 2.12** **Right to Create and Assign Bicycle Parking Areas**. Declarant hereby reserves to itself the unilateral right in its sole discretion to create bicycle parking areas (i) within Common Area portions of the Development, and (ii) within any portions of the Development that Declarant may designate as Exclusive Use Common Area for bicycle parking purposes (collectively, "Bicycle Parking Areas"), together with the unilateral right to grant, assign, lease or license easements or rights to use such Bicycle Parking Areas to Owners of Residential Units or Commercial Units, until such time as Declarant no longer owns any portion of the Development or Property. Such Bicycle Parking Areas may include, without limitation, any of the following: (1) common bike racks located in the Common Area for shared use by Owners, Occupants or Users of Residential Units and/or Commercial Units, (2) rooms, cages or racks for parking and/or storage of bicycles for shared use only by certain those Owners or Occupants Residential Units and/or Commercial Units who have been granted, assigned, leased or licensed easements or rights to use such areas for parking or storage of bicycles, or (3) individual rooms, cages, racks or lockers for parking and/or storage of bicycles for exclusive use only by certain those Owners or Occupants Residential Units and/or Commercial Units who have been granted, assigned, leased or licensed easements or rights to the exclusive of such areas for parking or storage of bicycles. Upon such grant, assignment, lease or license, described in subsections (2) or (3) above, such Owner or Occupant shall have either the right of shared or exclusive use of such Bicycle Parking Area, depending on the terms of the instrument of such grant, assignment, lease or license. Use of any Bicycle Parking Area shall be subject to the terms of this Declaration and the terms of the instrument of grant, assignment, lease or license. An Owner has the right to authorize its Tenant or other Occupant of the Owner's Unit to be a party to a bicycle parking license agreement or easement (but only during an authorized lease, tenancy or occupancy in compliance with this Declaration); provided that the Owner shall remain ultimately liable for compliance with the terms of this Declaration with respect to such license or easement, and such arrangement shall be subject to the reasonable requirements of the Master Association.

(a) **Use of Bicycle Parking Areas; Rules; Fees; Availability**. Use of Bicycle Parking Areas in the Development shall be at the bicycle user's risk, shall be subject to the Master Association Rules, and shall he subject to reasonable fees imposed by Declarant or the Master Association, which fees may be increased from time to time. Declarant and the Master Association shall have the right to temporarily change the location of such Bicycle Parking Areas in order to accommodate any maintenance or repairs within the Development. Only a limited number of exclusive use Bicycle Parking Areas may be available in the Development, and it is anticipated that all available exclusive use Bicycle Parking Areas will be granted, assigned, leased or licensed to Owners, such that there may be no more exclusive use Bicycle Parking Areas available for other Owners or Occupants of the Development. If all available exclusive use Bicycle Parking Areas have been granted, assigned, leased or licensed to Owners, then an Owner or Occupant desiring to use an exclusive Bicycle Parking Area shall not be able

to obtain an exclusive use Bicycle Parking Area from Declarant; provided that an exclusive use Bicycle Parking Area may be available for purchase or lease from another Owner as described in Section 2.12(d) below. If an Owner is not granted, assigned, leased or licensed the right to use an exclusive use Bicycle Parking Area, then such Owner shall not have any right to use an exclusive use Bicycle Parking Area in the Development. Availability and use of all shared Bicycle Parking Areas in the Development that are not designated for the exclusive use of a Unit Owner or Occupant shall be subject to the Rules of the Master Association. The Master Association may establish a waiting list or lottery system to determine which Owners or occupants are permitted to use the shared Bicycle Parking Areas in the Development that are not designated for the exclusive use of a Unit Owner or Occupant.

**(b) Suspension of Bicycle Parking Rights**. Use of any Bicycle Parking Area in the Development shall be subject to the rights of Declarant or the Master Association to temporarily suspend an Owner's or Occupant's use of any Bicycle Parking Area(s), upon reasonable notice, in order to accommodate any construction, maintenance or repairs in the Development. Declarant or the Master Association shall also be permitted to temporarily suspend the bicycle parking rights of any person for (i) violation of any bicycle parking license agreement or other agreement concerning bicycle parking, (ii) violation of any Master Association Rules concerning bicycle parking , (iii) failure to pay in fees related to bicycle parking (including, without limitation, assessments, penalties or fines imposed by the Master Association), or (iv) failure to comply with this Declaration (collectively "Bicycle Parking Violation"); provided that once the Bicycle Parking Violation is cured by the Owner, including, without limitation, payment in full of any fees, assessments, penalties or fines that have accrued in connection with an Owner's use of a Bicycle Parking Area, such suspension shall be lifted and the bicycle parking rights restored within seven (7) days after confirmation by Declarant or the Master Association that the Owner is in good standing with respect to bicycle parking. Each Owner hereby acknowledges that construction, maintenance or repair activities of the Declarant or the Master Association, or a Bicycle Parking Violation that has not been cured, may temporarily prevent or impair an Owner's right to use a Bicycle Parking Area and may constitute an inconvenience or nuisance, and each Owner on behalf of itself and any Occupants of its Unit, hereby releases the Declarant and the Master Association from any claims with respect to such matters.

**(c) Transfer of Bicycle Parking Areas.**

**(1)** Upon transfer of a Condominium by an Owner, the bicycle parking rights granted, assigned, leased or licensed to such Owner shall be automatically transferred to the transferee Owner and inure to the benefit of the new Owner so long as all of the following requirements are met: (A) such transferee Owner shall enter into a new bicycle parking lease, license or other agreement between such Owner and Declarant or the Master Association (if requested by Declarant or the Master Association), (B) such transferee Owner shall pay any fees requested by Declarant or the Master Association related to bicycle parking in the Development, which may include, without limitation, any administrative fees related to the transfer of bicycle parking , and any past due bicycle parking fees or other amounts of the transferor Owner that remain unpaid, (C) such transferee Owner shall cure any outstanding Bicycle Parking Violations, and (D) such transferee Owner shall provide all requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association.

**(2)** If such transferee Owner neglects or refuses to enter into a new bicycle parking lease, license or other agreement if requested by Declarant or the Master Association, or refuses or neglects to comply with the requirements described above, then the bicycle parking right that was transferred to such transferee Owner along with the transferor's Condominium shall be suspended until such time as such new Owner enters into such bicycle parking lease, license or other agreement to the

satisfaction of Declarant or the Master Association (if requested), as applicable, and complies with the requirements described above. During such suspension of bicycle parking rights, the Declarant or Master Association, as applicable, shall have the right to utilize any bicycle parking availability created thereby to provide bicycle parking to another Owner of Occupant, as determined by the Declarant or the Master Association, as applicable, in its sole discretion, and such new Owner whose bicycle parking rights are suspended shall have no right to receive any income or compensation related thereto; provided that once the above requirements have been satisfied, then the transferee Owner's bicycle parking right shall be restored within seven (7) days after confirmation by Declarant or the Master Association that the transferee Owner is in good standing with respect to bicycle parking .

**(d) Sale or Lease of Bicycle Parking Rights Between Existing Unit Owners**. If an Owner desires to sell or lease such Owner's bicycle parking rights under an existing valid bicycle parking assignment, lease or license agreement to an existing Owner of a Unit in the Development, then such sale or lease shall be permitted so long as the following requirements are met: (A) the two Owners sign an agreement in a form approved by Declarant or the Master Association, as applicable, and complete any documents requested by Declarant or the Master Association in connection with such sale or lease of the bicycle parking rights, (B) such transferee Owner or lessee shall enter into a new bicycle parking lease or license agreement between such Owner and Declarant or the Master Association if requested by Declarant or the Master Association, (C) such transferee Owner shall cure any Bicycle Parking Violations and shall pay any fees requested by Declarant or the Master Association related to bicycle parking in the Development, which may include, without limitation, any administrative fees related to the transfer of bicycle parking , and any past due bicycle parking fees or other amounts of the transferor Owner that remain unpaid, and (D) such transferee Owner shall provide all requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association. Upon completion of such transfer, the Master Association shall change its records to reflect the transfer to the transferee Owner. The Master Association shall retain in its records the written agreement of the two Owners. An Owner shall not be permitted to sell, assign or lease such Owner's bicycle parking rights to any non-Owner of a Unit in the Development.

**(e) Declarant Authority Over Bicycle Parking**.

**(1)** Declarant, so long as Declarant owns any portion of the Development or the Property, shall (i) have the unilateral right in its sole discretion to create Bicycle Parking Areas in the Common Area of the Development, and (ii) have the unilateral right in its sole discretion to sell, lease, grant, assign or otherwise provide easements or other rights to use any Bicycle Parking Areas in the Development (collectively "Dispose"). Declarant shall, upon exercising any of its rights concerning Bicycle Parking Areas or otherwise Disposing of Bicycle Parking Areas in the Development, inform the Master Association and designate such Bicycle Parking Areas or other Disposition of Bicycle Parking Areas in the records of the Master Association. Until such time as Declarant assigns its rights to provide rights to use or otherwise Dispose of Bicycle Parking Areas in the Development to the Master Association in writing, Declarant shall have the sole right and authority to create Bicycle Parking Areas in the Common Area of the Development, and to provide any bicycle parking licenses or otherwise Dispose of Bicycle Parking Areas in the Development.

**(2)** Notwithstanding anything to the contrary in this Section 2.12 or elsewhere in this Declaration, until such time as Declarant (i) assigns it right to create Bicycle Parking Areas in the Development, and its right to grant, assign, lease or license easements or rights to use such Bicycle Parking Areas to Owners of Residential Units or Commercial Units, or (ii) conveys its final property interest in the Development or Property, whichever is the first to occur, the Master Association shall have no right or authority to (A) create Bicycle Parking Areas in the Common Area or any other

portion of the Development, (B) grant, assign, lease or license easements or rights to use Bicycle Parking Areas to Owners of Residential Units or Commercial Units, or (C) impose any fees, fines, penalties, requirements or Rules concerning access to or use of any Bicycle Parking Areas that could hinder, delay, prevent or otherwise adversely affect Declarant's rights described in this Section 2.12 as determined by Declarant in its sole discretion, without the prior consent of Declarant, and any such actions of the Master Association shall be void without the consent of Declarant.

**(3)** Declarant shall have reasonable control and access to all corridors, hallways, doors, lobbies, elevators and other areas and improvements in the Common Area as reasonably necessary to create, access and use Bicycle Parking Areas in the Common Area, until such time as all sales of condominiums in the Property have been completed or until Declarant assigns or conveys its rights to create and sell, lease, grant, assign or otherwise provide easements or other rights to use any Bicycle Parking Areas in the Development to the Master Association.

**(4)** Section 2.12 shall be broadly construed to provide Declarant the right and without the consent of the Master Association or Owners to enter into contracts, leases, licenses, agreements, conveyances, transfers, easements or otherwise make arrangements for Bicycle Parking Areas in the Development for Owners, occupants and Invitees of both Residential Units and Commercial Units in the Development, in any manner determined by Declarant in its sole discretion for so long as Declarant owns any portion of the Development or Property or until assignment. Upon conveyance of Declarant's final Condominium or other interest in the Property, Declarant's rights reserved in this Section 2.12 shall automatically be assigned to the Master Association.

**(5)** Upon the first to occur of the following (i) Declarant's assignment of its unilateral right to create Bicycle Parking Areas in the Development, and its right to grant, assign, lease or license easements or rights to use such Bicycle Parking Areas to Owners of Residential Units or Commercial Units, or (ii) Declarant's conveyance of its final property interest in the Development or Property, the Master Association shall have all of the rights and obligations of Declarant described in this section, subject to the terms of any such assignment.

**Section 2.13** **Right to Create and Assign Storage Areas**. Declarant hereby reserves to itself the unilateral right in its sole discretion to create storage areas (i) within Common Area portions of the Development, and (ii) within any portions of the Development that Declarant may designate as Exclusive Use Common Area for storage purposes (collectively, "Storage Areas"), together with the unilateral right to grant, assign, lease or license easements or rights for the exclusive use of such Storage Areas to Owners of Residential Units or Commercial Units, until such time as Declarant no longer owns any portion of the Development or Property. Such Storage Areas may include, without limitation, storage rooms, closets, lockers, cages or similar areas to be used for storage purposes. Upon such grant, assignment, lease or license, such Owner or Occupant shall have the exclusive right to the use of the Storage Area, subject to the terms of this Declaration and subject to the terms of the instrument of grant, assignment, lease or license. An Owner has the right to authorize its Tenant or other Occupant of the Owner's Unit to be a party to a storage license agreement or easement (but only during an authorized lease, tenancy or occupancy in compliance with this Declaration); provided that the Owner shall remain ultimately liable for compliance with the terms of this Declaration with respect to such license or easement, and such arrangement shall be subject to the reasonable requirements of the Master Association.

**(a)** **Use of Storage Areas; Rules; Fees; Availability**. Use of Storage Areas in the Development shall be at the storage user's risk, subject to the Master Association Rules, and shall be subject to reasonable fees imposed by Declarant or the Master Association, which fees may be increased from time to time. Declarant and the Master Association shall have the right to temporarily change the

location of such Storage Areas in order to accommodate any maintenance or repairs within the Development. Only a limited number of Storage Areas may be available in the Development, and it is anticipated that all available Storage Areas will be granted, assigned, leased or licensed to Owners, such that there may be no more Storage Areas available for other Owners or Occupants of the Development. If all available Storage Areas have been granted, assigned, leased or licensed to Owners, then an Owner or Occupant desiring to use a Storage Area shall not be able to obtain a Storage Area from Declarant; provided that a Storage Area may be available for purchase or lease from another Owner as described in Section 2.13(d) below. If an Owner is not granted, assigned, leased or licensed the right to use a Storage Area, then such Owner shall not have any right to use a Storage Area in the Development.

**(b) Suspension of Storage Rights**. Use of any Storage Area in the Development shall be subject to the rights of Declarant or the Master Association to temporarily suspend an Owner's or Occupant's use of any Storage Area(s), upon reasonable notice, in order to accommodate any construction, maintenance or repairs in the Development. Declarant or the Master Association shall also be permitted to temporarily suspend the storage rights of any person for (i) violation of any storage license agreement or other agreement concerning storage, (ii) violation of any Master Association Rules concerning storage, (iii) failure to pay in fees related to storage (including, without limitation, assessments, penalties or fines imposed by the Master Association), or (iv) failure to comply with this Declaration (collectively "Storage Violation"); provided that once the Storage Violation is cured by the Owner, including, without limitation payment in full of any fees, assessments, penalties or fines that have accrued in connection with an Owner's use of a Storage Area, such suspension shall be lifted and the storage rights restored within seven (7) days after confirmation by Declarant or the Master Association that the Owner is in good standing with respect to storage. Each Owner hereby acknowledges that construction, maintenance or repair activities of the Declarant or the Master Association, or a Storage Violation that has not been cured, may temporarily prevent or impair an Owner's right to use a Storage Area and may constitute an inconvenience or nuisance, and each Owner on behalf of itself and any Occupants of its Unit, hereby releases the Declarant and the Master Association from any claims with respect to such matters.

**(c) Transfer of Storage Areas.**

(1) Upon transfer of a Condominium by an Owner, the storage rights granted, assigned, leased or licensed to such Owner shall be automatically transferred to the transferee Owner and inure to the benefit of the new Owner so long as all of the following requirements are met: (A) such transferee Owner shall enter into a new storage lease, license or other agreement between such Owner and Declarant or the Master Association (if requested by Declarant or the Master Association), (B) such transferee Owner shall pay any fees requested by Declarant or the Master Association related to storage in the Development, which may include, without limitation, any administrative fees related to the transfer of storage, and any past due storage fees or other amounts of the transferor Owner that remain unpaid, (C) such transferee Owner shall cure any outstanding Storage Violations, and (D) such transferee Owner shall provide all requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association.

(2) If such transferee Owner neglects or refuses to enter into a new storage lease, license or other agreement if requested by Declarant or the Master Association, or refuses or neglects to comply with the requirements described above, then the storage right that was transferred to such transferee Owner along with the transferor's Condominium shall be suspended until such time as such new Owner enters into such storage lease, license or other agreement to the satisfaction of Declarant or the Master Association (if requested), as applicable, and complies with the requirements described above. During such suspension of storage rights, the Declarant or Master Association, as applicable, shall

have the right to utilize any storage availability created thereby to provide storage to another Owner of Occupant, as determined by the Declarant or the Master Association, as applicable, in its sole discretion, and such new Owner whose storage rights are suspended shall have no right to receive any income or compensation related thereto; provided that once the above requirements have been satisfied, then the transferee Owner's storage right shall be restored within seven (7) days after confirmation by Declarant or the Master Association that the transferee Owner is in good standing with respect to storage.

(c) **Sale or Lease of Storage Rights Between Existing Unit Owners**. If an Owner desires to sell or lease such Owner's storage rights under an existing valid storage assignment, lease or license agreement to an existing Owner of a Unit in the Development, then such sale or lease shall be permitted so long as the following requirements are met: (A) the two Owners sign an agreement in a form approved by Declarant or the Master Association, as applicable, and complete any documents requested by Declarant or the Master Association in connection with such sale or lease of the storage rights, (B) such transferee Owner or lessee shall enter into a new storage lease or license agreement between such Owner and Declarant or the Master Association if requested by Declarant or the Master Association, (C) such transferee Owner shall cure any Storage Violations and shall pay any fees requested by Declarant or the Master Association related to storage in the Development, which may include, without limitation, any administrative fees related to the transfer of storage, and any past due storage fees or other amounts of the transferor Owner that remain unpaid, and (D) such transferee Owner shall provide all requested information and documentation to the Master Association for the Master Association records. Such transfer shall be subject to any reasonable requirements, documentation and fees requested by Declarant or the Master Association. Upon completion of such transfer, the Master Association shall change its records to reflect the transfer to the transferee Owner. The Master Association shall retain in its records the written agreement of the two Owners. An Owner shall not be permitted to sell, assign or lease such Owner's storage rights to any non-Owner of a Unit in the Development.

(d) **Declarant Authority Over Storage**.

(1) Declarant, so long as Declarant owns any portion of the Development or the Property, shall (i) have the unilateral right in its sole discretion to create Storage Areas in the Common Area of the Development, and (ii) have the unilateral right in its sole discretion to sell, lease, grant, assign or otherwise provide easements or other rights to use any Storage Areas in the Development (collectively "Dispose"). Declarant shall, upon exercising any of its rights concerning Storage Areas or otherwise Disposing of Storage Areas in the Development, inform the Master Association and designate such Storage Areas or other Disposition of Storage Areas in the records of the Master Association. Until such time as Declarant assigns its rights to provide rights to use or otherwise Dispose of Storage Areas in the Development to the Master Association in writing, Declarant shall have the sole right and authority to create Storage Areas in the Common Area of the Development, and to provide any storage licenses or otherwise Dispose of Storage Areas in the Development.

(2) Notwithstanding anything to the contrary in this Section 2.13 or elsewhere in this Declaration, until such time as Declarant (i) assigns it right to create Storage Areas in the Development, and its right to grant, assign, lease or license easements or rights to use such Storage Areas to Owners of Residential Units or Commercial Units, or (ii) conveys its final property interest in the Development or Property, whichever is the first to occur, the Master Association shall have no right or authority to (A) create Storage Areas in the Common Area or any other portion of the Development, (B) grant, assign, lease or license easements or rights to use Storage Areas to Owners of Residential Units or Commercial Units, or (C) impose any fees, fines, penalties, requirements or Rules concerning access to or use of any Storage Areas that could hinder, delay, prevent or otherwise adversely affect Declarant's rights described in this Section 2.13 as determined by Declarant in its sole discretion, without the prior consent

of Declarant, and any such actions of the Master Association shall be void without the consent of Declarant.

**(3)** Declarant shall have reasonable control and access to all corridors, hallways, doors, lobbies, elevators and other areas and improvements in the Common Area as reasonably necessary to create, access and use Storage Areas in the Common Area, until such time as all sales of condominiums in the Property have been completed or until Declarant assigns or conveys its rights to create and sell, lease, grant, assign or otherwise provide easements or other rights to use any Storage Areas in the Development to the Master Association.

**(4)** Section 2.13 shall be broadly construed to provide Declarant the right and without the consent of the Master Association or Owners to enter into contracts, leases, licenses, agreements, conveyances, transfers, easements or otherwise make arrangements for Storage Areas in the Development for Owners, occupants and Invitees of both Residential Units and Commercial Units in the Development, in any manner determined by Declarant in its sole discretion for so long as Declarant owns any portion of the Development or Property or until assignment. Upon conveyance of Declarant's final Condominium or other interest in the Property, Declarant's rights reserved in this Section 2.13 shall automatically be assigned to the Master Association.

**(5)** Upon the first to occur of the following (i) Declarant's assignment of its unilateral right to create Storage Areas in the Development, and its right to grant, assign, lease or license easements or rights to use such Storage Areas to Owners of Residential Units or Commercial Units, or (ii) Declarant's conveyance of its final property interest in the Development or Property, the Master Association shall have all of the rights and obligations of Declarant described in this section, subject to the terms of any such assignment.

**Section 2.14 Modification and Adjustment of Commercial Units; Combination of Commercial Units.**

**(a)** Owner(s) of any adjoining Commercial Units shall have the right to adjust and modify their Commercial Units without the consent or approval of any other Owner or the Master Association in order to create a different number or configuration of commercial space(s) to be used by such Commercial Unit Owner(s) or their tenants for any commercial purpose as described in Section 7.2 of this Declaration, which right shall include the right to (i) combine any number of adjoining Commercial Units to create one or more commercial spaces of different size or dimension, (ii) divide any Commercial Unit(s) into two or more commercial spaces, (iii) increase or decrease the number of individual commercial spaces in the Development to a number different than the number of Commercial Units shown on the Condominium Plan, (iv) reconfigure, modify or alter the physical boundaries of any Commercial Unit(s) or any commercial space(s), and (v) undertake or construct typical tenant improvement work to a Commercial Unit(s) or commercial space(s). Subject to Section 7.27(o), such adjustment and modification of Commercial Unit(s) and commercial space(s) may include, without limitation, and without the consent or approval of any other Owner or the Master Association, the addition, removal or relocation of demising walls, doors, windows, utilities, HVAC facilities, Lines, ducting, equipment and other improvements that serve the subject Commercial Units and may be located within the subject Commercial Units, other Commercial Unit(s) or the Common Area. The Commercial Unit Owners' rights described above shall include, without limitation, the right to access and use portions of the Common Area and common utility facilities as may be reasonably required in connection with the permitted commercial use of a Commercial Unit(s); provided that access to any other Residential Unit shall not be permitted without the consent of the Residential Unit Owner. In connection with such adjustment or modification of Commercial Unit(s) or commercial spaces, the Commercial Unit Owners' rights shall include, without limitation, the easements and other rights described in Sections 6.9 and 6.10

of this Declaration. Any such adjustment or modification of Commercial Unit(s) or commercial space(s) shall be subject to obtaining any required government permits and approvals.

**(b)** In connection with the exercise of the rights described in this Section 2.14 the subject Commercial Unit Owners shall notify the Master Association of any such adjustment and modification of Commercial Unit(s) or commercial space(s), and the Master Association may impose reasonable conditions and guidelines with respect to changes in order to protect the structural integrity of the Development and common utility facilities, but may not disapprove such change so long as the conditions are satisfied, provided that any such conditions shall be provided without unreasonable delay. Notwithstanding anything to the contrary in this Declaration, so long as Declarant owns any Commercial Unit(s), Declarant shall have the sole right to review any such proposed adjustment and modification to any Commercial Unit(s) or commercial space(s) and the sole right to impose any such conditions.

**(c)** The subject Commercial Unit Owners shall provide to the Master Association plans outlining, describing and delineating any adjustments and modifications to the boundaries of the Commercial Units as shown on the recorded Condominium Plan. If any Commercial Owner intends for its tenant(s) to pay any portion of that Commercial Unit Owner's share of Assessments directly to the Master Association pursuant to a lease, then such Commercial Unit Owner shall also provide to the Master Association a document indicating the percentage of that Commercial Unit Owner's Assessments that each such tenant shall be obligated to pay directly to the Master Association. Notwithstanding the foregoing, each Owner of any adjusted or modified Commercial Unit(s) as described in this Section 2.14 shall remain liable and responsible for all Assessments applicable to the Commercial Unit owned by such Owner in the same manner as if the Commercial Units had not been adjusted or modified. Reference is made to Article 4 for each Owner's obligation to pay Assessments.

**(d)** Notwithstanding anything to contrary in Section 4.8 or any other provision of this Declaration, the combination or division of Commercial Unit(s) to create a different number of commercial spaces, or the modification of the physical boundaries of any Commercial Unit(s) to create a different configuration of commercial space(s), shall not reduce the amount of any Assessments applicable to the subject Commercial Units that were in effect before such combination, division or modification. For the purpose of illustration only and not limitation, if three Commercial Units are combined to create a single commercial space, the owner(s) of the three subject Commercial Units shall remain obligated to pay the entire amount of any Assessments for all three Commercial Units as if the Units had not been combined, with no set-off or reduction due to the fact that such three Commercial Units are being operated as a single commercial space. Similarly, and for the purpose of illustration and not limitation, if one Commercial Unit is divided to create three commercial spaces, the owner of the one Commercial Unit shall remain obligated to pay the entire amount of any Assessments for that Commercial Unit as if Unit had not been so divided. Any changes to Assessments as a direct result of the combination, division or modification of Commercial Units to create a different number or configuration of commercial spaces shall be allocated to the subject Commercial Units only and not the Residential Units.

**(e)** The combination or division of Commercial Unit(s) to create a different number of commercial spaces, or the modification of the physical boundaries of any Commercial Unit(s) to create a different configuration of commercial space(s), shall not alter the voting attributable to each unit, which shall remain at one (1) vote per Unit, and shall be subject to Section 3.6 of this Declaration.

**(f)** Notwithstanding the foregoing or anything to the contrary in this Declaration, any such combination, division, modification or adjustment of any Commercial Unit(s) or the boundaries thereof as described above shall not effectuate a permanent legal change to or amendment of the

Commercial Units shown as described on the Condominium Plan without first complying with the requirements of Civil Code Section 4295 concerning amendment of the Condominium Plan.

**Section 2.15 Parking by General Public and Commercial Units in Garage; Access to Development**. Parking in the garage of the Development may be provided to the general public, and to Owners and Occupants of the Commercial Unit(s), as well as their agents, employees, guests, customers, tenants or other Invitees, by Declarant or the Master Association. So long as Declarant owns any portion of the Property, and until such time as Declarant has sold the last Unit owned by Declarant, Declarant shall have the unilateral right in its sole discretion to provide parking to the general public and to Owners and Occupants of the Commercial Unit(s), as well as their agents, employees, guests, customers, tenants or other Invitees, and the sole right to impose any rules or regulations concerning use of the parking garage in the Development by such parties and the general public. Declarant's rights hereunder shall include, without limitation, the right of Declarant to provide parking in the Development to any Person without any license agreement and without charging any fees or parking charge. Upon conveyance of the last Unit in the Property owned by Declarant, the Master Association shall determine whether to provide parking in the garage of the Development to the general public. Such users of the parking garage may have access to and use of portions of the Common Areas of the Development, including, without limitation, garage areas, stairways, hallways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with such parking.

**(a)** In furtherance of the foregoing in this Section 2.15, Declarant shall have the unilateral right in its sole discretion to enter into agreements with third parties for access to and use of the parking garage for parking purposes, and for installation of and access to and use of electric vehicle charging stations and use of such charging stations and related areas in the Development by third parties and their invitees.

**Section 2.16 View Impairment**. By accepting a deed to a Unit, each Owner acknowledges that: (a) there are no protected views, and no Owner is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit, (b) any view from the Unit is not intended as part of the value of the Unit and is not guaranteed, and (c) any future development, construction or other installation of improvements on the Property or any adjacent or other property may impair the view from any Unit.

**Section 2.17 Declaration of Site Restrictions**. The Development is subject to the applicable terms and conditions of that certain Declaration of Site Restrictions recorded on May 25, 2017, as Document No. 2017-K456270-00, in the Official Records of the City and County of San Francisco, State of California. Said Declaration of Site Restrictions imposes certain restrictions and requirements on the Affordable Housing Units concerning levels of affordability, occupancy, financing, sale and marketing, as well as other aspects of the Development. Reference is made to said Declaration of Site Restrictions for further detail concerning its terms and conditions.

**Section 2.18 Affordable Housing Units; Resale and Rental Restrictions; Resale Pursuant to Limited Equity Program.** Those Residential Units in the Development defined as "Affordable Housing Units" in Section 1.1 of this Declaration and in the DDA shall be subject to certain resale and rental restrictions administered by OCII and MOHCD. Pursuant to Section 5.05 of the DDA, the Affordable Housing Units shall be sold pursuant to OCII's Limited Equity Program. Reference is made to the DDA and Declaration of Site Restrictions for further detail on resale, rental and other restrictions that apply to the Affordable Housing Units. Owners may contact OCII or MOHCD for further information concerning the designated Affordable Housing Units and applicable restrictions. The resale

and rental restrictions described in the DDA, Declaration of Site Restrictions and the Limited equity Program, do not apply to the Market-Rate Units in the Development.

## ARTICLE 3
## THE ASSOCIATION

**Section 3.1** **Incorporation.** The Master Association and each Sub Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the deed for the first sale of a Condominium, the Master Association and each Sub Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

**Section 3.2** **Action Through Designated Officers.** Except as to matters requiring the approval of Owners as set forth in the Governing Documents, the affairs of the Master Association and each Sub Association, including the exercise of its powers and duties, shall be conducted by its Board, such officers as its Board may elect or appoint or such Persons with delegated authority as set forth in the Governing Documents.

**Section 3.3** **Master Association to Operate; Manage and Govern the Common Area.** The operation, management and governance of the Common Area shall be vested in the Master Association in accordance with the Governing Documents. The Owners of all of the Condominiums by accepting title to a Unit hereby covenant and agree that the administration of the Development shall be in accordance with the provisions of the Governing Documents. The Sub Associations shall not operate, manage or govern the Common Area, but shall have the limited rights, duties and obligations with respect to inspection, maintenance and repair described in Article 5, budgeting and Assessments as described in Article 4, and such other rights, duties and obligations that are expressly provided to the Sub Associations in the Governing Documents.

**(a)** **Limited Sub Association Authority**. Notwithstanding the foregoing, the Sub Associations shall have limited authority to operate and manage certain limited portions of the Common Area as described in this subsection. The authority of the Sub Associations shall be limited to the matters described in this subsection unless expressly stated otherwise.

**(1)** **MIRA I Sub Association**. The MIRA I Sub Association shall operate and manage certain corridors, stairwells and elevator lobbies in those portions of the Development containing the Residential Market-Rate Units. Such operation and management shall involve administration of and payment for certain services and related costs and expenses related to the above described areas, including, without limitation, insurance, custodial services, electricity, lighting and lighting fixtures, domestic water/sewer, painting and wall coverings, carpet cleaning and related equipment and improvements. The MIRA I Sub Association shall also obtain and pay costs and expenses for administrative services related to its formation, operation and management, including, but not limited to, management services and accounting. The MIRA I Sub Association shall also obtain typical and appropriate insurance coverage for its directors and officers, provided that such insurance may be coordinated with similar insurance policies obtained by the Master Association.

**(A)** **Shared Services and Expenses for Tower Residential Units**. Because the tower building in the Development contains both Market-Rate Units and Below Market Rate Units, certain services and related costs and expenses of the MIRA I Sub Association also benefit those Below Market Rate Units located in the tower. Therefore, the MIRA II Sub Association and its Members shall be obligated to pay a share of certain costs and expenses that are the responsibility of the MIRA I Sub Association as described in subsection 3.3(a)(1)(i) above, which costs and expenses include those for

custodial services, electricity, carpeting reserves, paint and wall coverings and lighting and lighting fixtures. The MIRA II Sub Association shall be obligated to pay to the MIRA I Sub Association a portion of such costs and expenses as indicated in the Association Budget.

(2) **MIRA II Sub Association**. The MIRA II Sub Association shall operate and manage certain corridors, stairwells and elevator lobbies in those portions of the Development containing the Below Market Rate Units. Such operation and management shall involve administration of and payment for certain services and related costs and expenses related to the above described areas, including, without limitation, insurance, custodial services, electricity (lighting), lighting and lighting fixtures, domestic water/sewer and carpet cleaning. The MIRA II Sub Association shall also obtain and pay costs and expenses for administrative services related to its formation, operation and management, including, but not limited to, management services and accounting. The MIRA II Sub Association shall also obtain typical and appropriate insurance coverage for its directors and officers, provided that such insurance may be coordinated with similar insurance policies obtained by the Master Association. The MIRA II Sub Association shall also be obligated to pay to the MIRA I Sub Association a portion of the costs and expenses for the shared services related to the Below Market Rate Units located in the tower, as described in subsection 3.3(a)(1)(A) above, as further described in the Association Budget.

**Section 3.4 Association Membership.** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Master Association. Each Owner of a Residential Condominium Unit shall also be a Member of the Sub Association for such Owner's particular Unit, i.e., in addition to being a Member of the Master Association, each Owner of a Market-Rate Unit shall be a Member of MIRA I Sub Association, and each Owner of a Below Market Rate Unit shall be a Member of MIRA II Sub Association. Each Commercial Unit Owner shall only be a Member of the Master Association. Each such Unit Owner shall remain a Member of the Master Association and the respective Sub Association (as applicable) until such time as that Owner's ownership ceases for reasons set forth herein, at which time that Owner's membership in such Association(s) shall automatically terminate. Each Owner shall have the rights, duties and obligations of membership as set forth in the Governing Documents. Any party that holds an interest in a Condominium merely as security for performance of an obligation shall not be a Member of such Association(s).

**Section 3.5 Transferred Membership.** Membership in an Association shall not be transferred, pledged or alienated in any way, except upon the sale, conveyance, judicial sale or other voluntary or involuntary transfer of the Condominium to which it is appurtenant and then only to the purchaser in the case of a sale or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in its name to the purchaser of its Condominium, any such Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

**Section 3.6 Membership Classes and Voting Rights.** The Master Association and Sub Associations shall each initially have three classes of voting Members as follows, and the Master Association and Sub Associations shall each be separately subject to the following provisions:

(a) **Class A.** There shall be Class A voting Members of the Master Association, Class A voting Members of the MIRA I Sub Association and Class A voting Members of the MIRA II Sub Association. Class A voting Members of each association shall consist of all Owners with the exception of the Declarant and shall be entitled to one vote or right of consent for each Condominium owned. When more than one Person holds an interest in any Condominium, all such Persons shall be Members; provided, however, the vote or right of consent for any such Condominium shall be exercised in accordance with the Bylaws and as such multiple Owners may among themselves determine, but in no

event shall more than one vote be cast or right of consent be exercised with respect to any Condominium. No fractional votes shall be permitted with respect to any Condominium. When more than one Owner owns a Condominium, there shall be a Voting Member for such Condominium, as provided in the Bylaws.

**(b) Class B.** There shall be a Class B voting Member of the Master Association, a Class B voting Member of the MIRA I Sub Association and a Class B voting Member of the MIRA II Sub Association. The Class B voting Member shall consist of the Declarant who shall be entitled to three (3) votes or rights of consent for each Condominium owned, i.e., (i) Declarant shall be entitled to three (3) votes or rights of consent in the Master Association for each Condominium owned, and (ii) Declarant shall be entitled to three (3) votes or rights of consent in the MIRA I Sub Association for each Market-Rate Unit owned, and Declarant shall be entitled to three (3) votes or rights of consent in the MIRA II Sub Association for each Below Market Rate Unit owned. Declarant may designate one or more persons to exercise Declarant's rights as a Member of the Master Association and Sub Associations. The Class B voting membership shall cease and be converted to Class A voting membership on the happening of whichever of the following events first occurs:

**(i)** When seventy-five percent (75%) of the Condominiums proposed for the Development have been conveyed to Class A Members; or

**(ii)** On the fourth (4th) anniversary of the first conveyance of a Residential Condominium to a Class A Member in the Development under the authority of a Final Public Report issued by the DRE.

The use of Class B voting shall be entirely at the discretion of Declarant. If neither of the foregoing events has yet occurred, by written notice to the Board, Declarant may elect to cease the Class B membership and convert the Class B membership to Class A membership. The provisions of Section this 3.6(b) can be amended only with the consent of Declarant during such time as the Class B membership is in existence.

**(c) Class C.** There shall be a Class C Member of the Master Association, a Class C Member of the MIRA I Sub Association and a Class C Member of the MIRA II Sub Association. The Class C Member of each association shall be Declarant, who shall be entitled to vote as described in this Section 3.6(c) without regard to whether (1) the weighted Class B voting rights described in Section 3.6(b) above have terminated, or (2) the Class B Member then owns a Condominium in the Development which is subject to Assessments. The Class C Member shall have the right to appoint a simple majority of the Board of Directors of the Master Association and each Sub Association, and shall have no other right to vote, and specifically shall not have the right to vote to initiate claims for violations of Title 7 as more fully described in Section 3.6(i) below. This arrangement shall irreversibly terminate on the first to occur of the following:

**(i)** When ninety percent (90%) of the Residential Condominiums proposed for the Development have been conveyed to Class A Members; or

**(ii)** On the fourth ($4^{th}$) anniversary of the first conveyance of a Residential Condominium to a Class A Member in the Development under the authority of a Final Public Report issued by the DRE.

The use of Class C voting shall be entirely at the discretion of Declarant. If none of the foregoing events has yet occurred, by written notice to the Board, Declarant may elect to cease the Class C membership and convert the Class C membership to Class A membership. The provisions of Section this

3.6(c) can be amended only with the consent of Declarant during such time as the Class C membership is in existence.

**(d) Declarant's Right to Elect Director**. In any election of Directors for the Board of Directors of the Master Association after Class B and Class C memberships for each such association have been terminated, for a period of eleven (11) years after the close of escrow for sale of the first Condominium Unit by Declarant (the "Declarant Director Period"), the Master Association and each Sub Association shall adopt special procedures to ensure that at least one (1) Director is elected by Declarant, which Director shall have a term of two (2) years (but may be re-elected during the Declarant Director Period). A Director elected by Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant. This right of Declarant to elect at least one Director to the Board may be exercised by Declarant in Declarant's sole discretion. The provisions of Section this 3.6(d) can be amended only with the consent of Declarant during the Declarant Director Period.

**(e)** Other than the provisions contained in Section 11.6, no provision of the Governing Documents which requires the approval of a prescribed majority of Members of the Master Association or a Sub Association other than Declarant for action to be taken by such Association is intended to preclude the Declarant from casting votes attributable to Condominiums which it owns. Notwithstanding anything to the contrary herein, any action for which the Governing Documents require the approval of a majority (or greater) of Members of the Master Association or a Sub Association other than Declarant shall require the affirmative vote or written consent of a majority of the Class B voting power as well as the affirmative vote or written consent of a majority of the Class A voting power, or, upon the conversion of Class B memberships to Class A memberships, the affirmative vote or written consent of a majority of the total voting power of the Master Association or a Sub Association, as applicable to the particular vote, as well as the affirmative vote or written consent of a majority of the total voting power of Members other than Declarant.

**(f)** Voting rights of a Class A Member shall vest at the time Assessments are levied against such Owner's Condominium, or as provided in a subsidization plan which may be approved by the DRE, whichever occurs first. Notwithstanding the foregoing, and subject to the approval of the Board, if any of the actions of the Members are actions which only relate to the Residential Units, then only the consent of the Residential Unit Owners owning a majority of the Residential Units shall be required. Similarly, and subject to the approval of the Board, if the action of the Members only relates to the Commercial Units, then only the consent of the Commercial Unit Owners owning a majority of the Commercial Units shall be required. Subject to the foregoing in this Section 3.6, matters requiring the approval of the Members may be approved (i) by the requisite votes cast in person or by proxy at a duly-held regular or special meeting of the Members at which a quorum was present, (ii) by written ballots cast in compliance with the requirements of California Corporations Code Section 7513 or any successor statute thereto, or (iii) by unanimous written consent of all the Members. Reference is made to the Bylaws for further detail.

**(g) Vote of Commercial Unit Owners**. Commercial Unit Owners shall be Members of the Master Association only (and not the Sub Associations). Notwithstanding anything to the contrary set forth in this Declaration, any action of the Board which disproportionately impacts the Commercial Units or the Commercial Unit Owners in a materially adverse manner shall require the approval of the Commercial Unit Owners owning a majority of the Commercial Units unless a higher percentage is required under this Declaration, in which case the higher percentage shall apply.

**(h) Personal Liability**. No volunteer officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any

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

**(i)** Notwithstanding the foregoing provision of this Section 3.6, Declarant shall have no control over the Master Association's ability to decide whether or not to initiate a construction defect claim under Title 7 (Part 2, Division 2) of the California Civil Code. During the period from the incorporation of the Master Association and the first election of the Board of Directors, any decision whether or not to initiate a construction defect claim under Title 7 shall be made by vote of a majority of the Members of the Master Association, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members of the Master Association, or may be by written ballot. During the period between the first closing of an escrow for a Unit within the Development and the election of a Board at least two Members of which were elected solely by votes of Members other than Declarant, the Master Association Board shall take any action concerning construction defect claims under Title 7 (including, if necessary, the allocation of Association funds) as requested by a majority of the Members other than Declarant pursuant to a vote of the Members of the Master Association, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members, or may be by written ballot. Upon the election of a Board of the Master Association, which results in there being at least two (2) Directors elected solely by votes of Members other than Declarant ("Non-Declarant Directors"), any decisions made thereafter by the Master Association about whether or not to initiate a construction defect claim under Title 7 shall be made by the two (2) Non-Declarant Directors, or in the event that there are three (3) or more Non-Declarant Directors serving on the Board, by a majority of the Non-Declarant Directors; provided, that any determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 must be ratified by at least a majority of the Members, excluding the vote of Declarant; provided, further, that any such determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 shall be subject to the terms and conditions of Sections 10.3 and 10.4 of this Declaration. The provisions of this section shall be amended only with the vote or written consent of at least a majority of the Members, excluding the vote of Declarant. Only the Master Association, and not the Sub Associations, shall have the authority to initiate any construction defect claim or related claims as described in this paragraph.

**Section 3.7** **General Duties and Powers of Associations.** In addition to the duties, powers and limitations enumerated in the Articles and Bylaws of the Master Association or elsewhere provided for at law or herein, and those enumerated in Section 7140 of the Corporations Code, and without limiting the generality thereof, the Master Association, through its Board of Directors, shall have the general powers and duties described in this Section 3.7. As the Master Association is the primary owners association for the MIRA Development and the Sub Associations are generally subordinate to the Master Declaration, the powers and duties described in this Section 3.7 shall be those of the Master Association and not the Sub Associations. Notwithstanding the foregoing, the Sub Associations shall have the powers and duties expressly stated in Section 3.7(cc) below.

**(a)** Subject to the provisions of Section 5.1 of this Declaration, manage, control, operate, repair, replace, restore, and maintain in good condition and appearance, all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than that placed by an Owner or tenant upon any Exclusive Use Common Area). The Association shall maintain and repair any portions of the Common Area damaged by the presence of wood destroying pests or organisms, and all property that may be acquired by the Association. In furtherance of its responsibilities under this Section 3.7, and as further described in Sections 5.1 and 5.2 below, the Association may cause any maintenance, repair or replacement of any portion of the Common Area. Relocation of Owners or tenants required in order to repair any areas within the responsibility of the Association shall be subject to the provisions of Civil Code Section 4785.

**(b)** Acquire, provide and pay for water, sewer, garbage disposal, composting, recycling, electrical, gas and other necessary utility services for the Common Area, and for those Units to which said utilities and services are not separately provided; provided, however, the Association shall have no liability (i) to any Owner arising out of the temporary or permanent failure of any utility, governmental entity or quasi-utility to deliver such services after the Association has contracted for such services, or (ii) to any utility service provider due to nonpayment of an Owner.

**(c)** Grant easements over, under and through the Common Area and/or any of the Units that are reasonably necessary for the efficient operation of the Development.

**(d)** Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in protecting the interests of the Association and its Members, as further provided in Article 9 of this Declaration.

**(e)** Have the authority to employ a manager or other Person(s) and to contract with independent contractors or managing agents to perform all or any part of the duties or responsibilities of the Association except the initiation and execution of disciplinary proceedings against Members in accordance with the procedure set forth in the Bylaws; provided, however, that any contract with a firm or Person appointed as a manager or managing agent shall not exceed a three (3) year term and shall provide for the right of the Association to terminate the same after no longer than one (1) year upon thirty (30) days written notice with cause and upon sixty (60) days written notice without cause, in either case without payment of a termination fee or other penalty. The Association shall employ professional manager(s) or managing agent(s) consistent with industry best practices, and as is appropriate to maintain the Development in a first-class condition and repair, although the contract with any such manager or managing agent shall be of limited duration as set forth above. In order to facilitate efficient management and administration of the Development and to avoid duplicative costs and expenses for such management and administration, the Sub Associations shall use the same management company as the Master Association.

**(f)** Discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and assess the costs thereof as a monetary penalty against any Owner responsible for the existence of said lien as determined by the Board after notice and a hearing in accordance with the Bylaws.

**(g)** Enforce this Declaration and adopt reasonable Association Rules not inconsistent with this Declaration concerning use of the Common Area and all improvements and facilities now or hereafter located thereon and the conduct of Owners and their tenants, guests and Invitees with respect to the Development.

**(h)** Defend, prosecute and settle, as deemed necessary, all lawsuits, arbitrations, mediations and administrative proceedings involving the Association in the Association's own name as the real party in interest and without joining with it the individual Owners in the manner described in Civil Code Section 5980.

**(i)** Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow, lend money or otherwise use its credit and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property or income, and including contracts, leases and purchase and sale agreements for services, equipment, machinery and other improvements serving the Development or portion thereof.

**(j)** Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

**(k)** Fill a vacancy on its Board, except for (1) a vacancy created by the removal of a Board member, which shall be filled as provided in the Bylaws, and (2) a vacancy with respect to any Board member appointed by Declarant. Any election of a Board member shall comply with applicable procedures provided in Civil Code Sections 5100-5130.

**(l)** Establish and maintain separate, restrictive accounts into which only Annual Assessments, Special Assessments, other Assessments, and reserves shall be deposited. Approval of the Board shall be obtained prior to the expenditure of such reserves.

**(m)** Subject to the provisions of Article 10 of this Declaration, and subject to the provisions of the Title 7 Master Declaration, the Master Association shall have the authority to institute, defend, settle, or intervene on behalf of the Association, and subject to compliance with Civil Code Sections 5900-5920 and 5925-5965 and the provisions of this Declaration, in litigation, arbitration, mediation, judicial reference, or administrative proceedings in matters pertaining to:

**(1)** enforcement of this Declaration, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law;

**(2)** damage to the Common Area;

**(3)** damage to Unit(s) which the Association is obligated to maintain or repair; or

**(4)** damage to Unit(s) which arises out of, or is integrally related to, damage to the Common Area or Units which the Association is obligated to maintain or repair.

**(n)** In the event that a public nuisance exists or is conducted on any portion of the Common Area, the Association shall have the right to take reasonable measures to abate such nuisance, subject to the reasonable discretion of the Board.

**(o)** As further described in the Bylaws, the Master Association shall adopt rules as required by Civil Code Sections 5100-5130 pertaining to elections, campaigns, voting, proxies and other matters contained therein.

**(p)** Provide the Owners with all notices, disclosures, reports and statements required by this Declaration and as required by the Davis-Stirling Act, including, without limitation, the following notices:

**(1)** Annual notices of the Association's operating budget (including a reconciliation of actual expenses incurred for the previous year), Assessment and reserve funding disclosure form, and the Association's Foreclosure rights (See Section 4.11);

**(2)** Annual notices concerning insurance policies maintained by the Association (See Section 9.9(c));

**(3)** Notices concerning alternative dispute resolution (See Sections 10.1 and 10.2);

**(4)** Schedule of fines adopted by the Association (Civil Code Section 5850);

**(5)** Balance sheet and related information as set forth in Section 9.08(d)(2) of the Bylaws;

**(6)** Statement of any transaction or indemnification described in California Corporations Code Section 8322(d) and (e), and a statement notifying members of their right to have copies of minutes of meetings of the governing body, as set forth in Section 9.08(d)(4) of the Bylaws;

**(7)** Notice of Architectural Guidelines and Procedures required by Civil Code Section 4765; and

**(8)** Other notices and disclosures required by Civil Code Sections 5300-5320, 5500-5560, 5565, 5570, 5580, 5730, 5810, 4040(b).

**(q)** Provide to Declarant all notices described in Section 3.7(p) above. In addition to the notices described in Section 3.7(p) above, the Board shall provide Declarant with all other Association notices, reports, summaries, budget pro-formas and statements, reserve studies, assessment notices under Section 4.9, 4.13, expenditure of Reserves notices under Section 4.21, and copies of all other notices required to be given to the Owners by other provisions in this Declaration and in the Bylaws, including, without limitation, notices, agendas, and minutes of all Board and Association Member meetings.

**(r)** Enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of exclusive or nonexclusive telecommunications, cable or satellite television and/or internet services contract(s) with provider(s) of such services pursuant to which such service provider(s) will serve as the exclusive provider(s) of such services to each Unit in the Development.

**(s)** Subject to the rights of Declarant, the Association shall have the right to enter into agreements with the Declarant and/or adjacent property owner(s) concerning reciprocal access easements, shared use and maintenance of easement areas on the Development, and shared use and maintenance of the Common Area, parking and Residential Facilities.

**(t)** Enter into agreements with parking garage operators and related service providers in order to provide parking and related services for the Development.

**(u)** The Association shall have the right and authority to enter into maintenance or subsidy agreements with Declarant.

**(v)** Omitted.

**(w)** The Association shall have the power to limit the number of an Owner's Invitees who may use the Common Area facilities and improvements, including, without limitation, the Residential Facilities, which right shall include, without limitation, the right to impose disciplinary measures taken after notice and hearing, as provided in this Declaration or the Bylaws.

**(x)** The Association may charge a reasonable fee to all Residential Unit Owners to cover all of the costs of administering an Owner, or the tenants of a Residential Unit, moving in or out of a Residential Unit, or moving furniture or equipment or other objects into or out of a Residential Unit that requires the use of the elevators in the Development, or parking of any moving truck or vehicle in connection such move, or use of any loading dock areas.

**(y)** The Association shall have the right to (a) limit on a reasonable basis the number of an Owner's Invitees that may use the Residential Facilities, (b) charge reasonable fees for use of the Residential Facilities by an Owner's Invitees, (c) charge reasonable fees for special or extraordinary use of the Residential Facilities, and (d) allow portions of the Residential Facilities to be reserved for special events.

**(z)** Subject to Declarant's rights and authority over the Common Area as described in this Declaration, including, without limitation, (i) Section 2.11 (Declarant's right to grant parking licenses), (ii) Section 2.12 (Declarant's right to grant bicycle parking licenses), (iii) Section 2.13 (Declarant's right to grant storage licenses), (iv) Section 2.15 (right to provide public and commercial parking), Section 3.11 (Authority over Common Area), (v) Declarant's easement rights described in Article VI, (vi) Declarant's right to designate portions of the Common Area as Exclusive Use Common Area and to grant, assign, license or lease licenses or easements for the exclusive use of such Exclusive Use Common Area, and (vii) Declarant's rights described in Section 11.4, the affirmative vote of at least fifty-one percent (51%) of the Member of the Master Association shall be required in order for the Master Association Board to grant the exclusive use of any portion of the Common Area to any individual Unit Owner in the Development, subject to any exceptions or limitations described in Civil Code Section 4600. After Declarant's assignment of its rights over the Common Area described above and elsewhere in this Declaration, but subject to any existing licenses or easements established by Declarant, the above restriction shall expressly not apply to the Master Association's provision of licenses or easements for the exclusive use of portions of the Common Area for vehicular parking, bicycle parking or storage purposes.

**(aa)** Notwithstanding anything to the contrary in this Declaration or the Bylaws, Declarant shall have the right to serve on the Board in an advisory capacity if desired by Declarant, as further described in Section 5.05 of the Bylaws.

**(bb)** Notwithstanding anything to the contrary in this Section 3.7 or in any other provision of this Declaration or the Governing Documents, for so long as Declarant owns any portion of the Development or Property, the Association shall have no power or authority to prevent, restrict, regulate or control Declarant's ability to designate any portion of the Common Area for residential or commercial vehicular parking, bicycle parking or storage purposes, and to license, sell, lease, grant or otherwise provide the right to use of any such areas for such purpose.

**(cc)** **Limited Powers and Duties of the Sub Associations**. The powers and duties of the Sub Associations shall be expressly limited to those few matters described in Section 3.3(a)

above. With respect to those limited matters only, the Sub Associations shall have the following duties and powers: **(1)** operate, maintain and repair those certain corridors, stairwells and elevator lobbies as described in Section 3.3(a); **(2)** obtain typical and appropriate insurance coverage for its directors and officers, provided that such insurance may be coordinated with similar insurance policies obtained by the Master Association as described in Section 3.3(a); **(3)** employ a manager to perform the duties of the Sub Associations, provided that in order to facilitate efficient management and administration of the Development and to avoid duplicative costs and expenses for such management and administration, the Sub Associations shall use the same management company as the Master Association; and **(4)** the powers and duties described in Sections 3.7(k), 3.7(l), 3.7(o), 3.7(p), 3.7(q). Without limitation of the foregoing, as the Master Association is the primary owners association for the Development and the Sub Associations are intended to play a limited role with limited authority, the Sub Associations shall expressly not have the powers and duties and powers described in Sections 3.7(c), 3.7(g), 3.7(m), 3.7(r), 3.7(s), 3.7(t), 3.7(y). Except as expressly stated in this subsection 3.7(cc), all of the powers and duties described in this Section 3.7 shall be the powers and duties of the Master Association, even with respect to those matters described as within the authority of the Sub Associations in Section 3.3(a).

**Section 3.8 Capital Improvements by Master Association.** Subject to the terms of this Declaration, the Master Association may purchase install, construct or cause to be constructed capital improvements upon the Common Area; provided, however, that the Master Association shall not incur in any fiscal year aggregate expenses for such capital improvements which exceed three percent (3%) of the budgeted gross expenses of the Association for such fiscal year without the vote or written consent of a majority of each of Class A and Class B Members or, in the event Class B memberships have been converted to Class A memberships, the vote or written consent of a majority of the total voting power of the Association as well as the vote or written consent of a majority of the total voting power of Members other than Declarant; provided that any Special Assessment related to such capital improvement shall be limited as described in Section 4.4(b). If such capital improvements are for the sole benefit of the Residential Unit Owners, then only such vote or written consent of the Residential Unit Owners shall be required, and the cost of such capital improvements shall be assessed only to the Residential Unit Owners. If such capital improvements are for the sole benefit of the Commercial Unit Owners, then only such vote or written consent of the Commercial Unit Owners shall be required, and the cost of such capital improvements shall be assessed only to the Commercial Unit Owners. In any event, the approval of the Master Association Board shall be required for any such capital improvements.

**Section 3.9 Association Rules.**

**(a)** As further described in Section 3.7(g) above, the Master Association shall have the power to adopt, amend, and repeal the Association Rules as it considers reasonable and appropriate, subject to the Owners' right to receive prior notice of, and to challenge, the adoption, amendment, or repeal of certain categories of Association Rules as provided in California Civil Code Section 4340-4370. The Association Rules shall govern, without limitation, parking restrictions, bicycle parking, motorcycle parking, moving procedures, noise, garbage, building access, storage areas, signs, pets, long and short term leasing of the Units, minimum standards of property maintenance, and access to and use of the Common Area and all facilities, amenities and improvements located thereon or related thereto, including, without limitation, any common courtyard, walkways, corridors, common area roof terraces and related facilities, and private exclusive use decks, terraces and balconies appurtenant to Unit Owners' Units, by all Unit Owners and Occupants, and their respective family members, guests and Invitees. The Association Rules shall not be inconsistent with nor materially alter any provisions of this Declaration, the Articles, or the Bylaws. In a conflict between a provision of the Association Rules and the provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of such inconsistency. A copy of the Association Rules as adopted, amended, or repealed shall be mailed or

otherwise delivered to each Unit Owner and a copy shall be posted in a conspicuous place within the Development as and if required by the Davis-Stirling Act.

**(b)** Notwithstanding anything to the contrary in this Section 3.9 or in any other provision of this Declaration or the Governing Documents, any Association Rule that (i) materially affects the permitted use or operation of the Commercial Unit(s), portion thereof or Exclusive Use Common Area appurtenant thereto, or (ii) otherwise materially affects any provision of this Declaration or the Governing Documents that specifically confers easement(s), rights, licenses or other benefits on the Commercial Unit Owner(s) and not any other Owner, shall not be effective without the prior written consent of the Owner of the affected Commercial Unit(s). The provisions of this Section 3.9 pertaining to Commercial Units shall not be amended without the prior written consent of the Owners of the Commercial Unit.

**(c)** Notwithstanding the foregoing in this Section 3.9, the Board shall have the right to adopt Association Rules restricting the Owners and occupants of the Commercial Units as well as the Commercial Tenants and their guests, employees and other invitees, from access and using the Residential Facilities and other residential portions of the Development, so long as such Rules do not directly and adversely affect the permitted use of a Commercial Unit.

**(d)** Notwithstanding anything to the contrary in this Section 3.9 or in any other provision of this Declaration, any Association Rule that requires Declarant or its successor to obtain any approval or consent from the Association or the Board or Architectural Control Committee for any construction, installations, completion or renovation of the Development or any improvements thereon, or any sale or leasing of any Unit in the Development, shall not be effective without the prior written consent of Declarant or its successor. This paragraph may not be amended without the prior written consent of Declarant or its successor.

**Section 3.10** **Penalties; Fines; Disciplinary Action.** The Master Association Board shall have the power to impose fines, penalties or take disciplinary action against any Owner for failure to pay Assessments of the Master Association or a Sub Association (as further described in Article 4 below) or for violation of any provision of the Governing Documents or the Association Rules. Penalties may include but are not limited to fines, suspension of all voting rights and other privileges of Association membership, suspension of right to park in the Development, suspension of right to use storage area or bicycle parking in the Development, suspension of right to use Residential Facilities in the Development, or other appropriate discipline, as determined by the Master Association Board, provided that the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine, penalty or disciplinary action. The Master Association shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration and the Association Rules as further described in the Bylaws. All fines, penalties, or disciplinary actions against Owners shall comply with the notice and procedural requirements of this Declaration and Sections 5850-5855 of the California Civil Code.

**Section 3.11** **Authority Over Common Area**. The Board or Declarant (as long as Declarant owns one or more 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 or nonexclusive use easements or rights, licenses, lot-line adjustments, rights-of-way, 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 access to and use 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 access to and use of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such actions and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish such actions, including, but not limited to, grant deeds, easements, licenses, condominium plans, subdivision maps, and lot-line adjustments. Declarant's rights described in this Section 3.11 shall terminate on the first to occur of the following: (1) the conveyance by Declarant of the last Unit in the Property owned by Declarant, or (2) the date that is four (4) years from the first conveyance of a Unit in the Property by Declarant pursuant to a Public Report issued by the DRE.

**Section 3.12** **Acceptance of Common Area and Improvements**. The nature, design, quality and quantity of all Common Area and all improvements thereon shall be determined by Declarant in its sole discretion. The Association shall be obligated to accept any Common Area and all improvements thereon and any easements or licenses over the Common Area conveyed by Declarant and/or created under this Declaration, any Supplemental Declaration or any license agreement or easement agreement. The Association shall accept any license agreements for parking, bicycle parking or storage entered into by Declarant and any buyer of Owner of a Unit. The Association shall comply with the requirements of any agreements entered into between Declarant and any governmental agency pertaining to the Common Area and improvements thereon, and shall formally accept any such agreement if requested by Declarant or any governmental agency. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Common Area and improvements thereon, or the acceptance of inspection, maintenance and repair obligations related thereto, the Association shall be obligated to accept title to the Common Area and improvements thereon if requested and undertake inspection, maintenance and repair obligations therefor, pending resolution of the dispute, in accordance with the provision for enforcement set forth in Article 10 of this Declaration.

**Section 3.13** **Residential Facilities**. The Board shall have the authority to limit, restrict or suspend any Owner or Occupant from accessing or using any of the Residential Facilities or other amenities in the Common Area in connection with such Owner's or Occupant's violation of any of the Governing Documents or Association Rules. The Board shall have the authority to establish and charge fees for special or extraordinary use of the Residential Facilities, including the right to change such fees from time to time. The Board shall have the authority to establish and enforce fines or penalties for violation of any Governing Documents or Association Rules related to the Residential Facilities.

## ARTICLE 4
## ASSESSMENTS

**Section 4.1** **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Condominium owned within the Development hereby covenants, and each Unit Owner by acceptance of a deed for each Condominium, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Master Association and the Sub Association of which each Owner is a Member: Annual Assessments, Special Assessments, and all other Assessments to be established and collected as provided in this Declaration. The Assessments, together with interest, costs and reasonable attorney's fees, shall be charged to a Unit and shall be a continuing lien upon such Unit, the lien to become effective upon the recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time any such Assessment becomes due. As required by the California Civil Code, before the Master Association or a Sub Association may place a lien upon a Unit pursuant to this Section, to collect an obligation which is past due, such Association shall notify the Unit

Owner in writing by certified mail of the fee and penalty procedures of such Association, provide an itemized statement of the charges owed by the Unit Owner, including items on the statement which indicate the Assessments owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by such Association, including the right of such Association to the reasonable costs of collection. Any payments owed toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection payments. The personal obligation for delinquent Assessments shall not pass to the Unit Owner's successors in title unless expressly assumed in writing by them. The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of Ownership shall pass to the new Owner. No Unit Owner may exempt himself or herself from liability for his or her contribution towards the Common Expenses by waiver of the use or enjoyment of the Common Area or by the abandonment of his or her Unit. All Assessments shall be payable in the amounts specified by the particular Assessment and offsets against such amount shall not be permitted for any reason, including, without limitation, a claim that the Master Association or a Sub Association is not properly exercising its duties of maintenance, repair operation or enforcement.

**Section 4.2** **Purpose of Assessments.** The Assessments levied by the Master Association and Sub Associations shall be used exclusively to promote the health, safety and welfare of the residents in the Development, for the improvement and maintenance of the Common Area and for the common good of the Development. Use of Master Association funds and Sub Association funds for election or campaign purposes shall be limited as provided in Civil Code Section 5135. Assessments shall include, without limitation, contributions by the Master Association funds and Sub Association(s) toward any reciprocal easement agreement, shared use and maintenance agreement or cost sharing agreement to which the Master Association or Sub Association(s) is a party or is otherwise obligated thereunder. The Assessments collected by the Master Association and Sub Associations shall be held in trust by the Master Association and Sub Associations for and on behalf of each Owner who is a Member of the Master Association and Sub Associations. Upon the sale or transfer of any Unit, the Owner's interest in the funds shall be deemed automatically transferred to the successor of such Owner.

**Section 4.3** **Annual Assessments.**

**(a)** Each Unit Owner shall pay Assessments based upon the initial operating budget for the Development submitted by Declarant and accepted by the DRE as a part of Declarant's application for a Public Report. Said budget shall include components for the Master Association and each Sub Association, as well as other expenses and related Assessments. Said budget shall be based on the estimated operating expenses to be paid during the initial twelve months by the Master Association and each Sub Association in the performance of their duties (plus a reasonable provision for reserves for maintenance, repair and replacement) and shall be assessed against the Units in the Development as provided in Section 4.8 of this Declaration. The operating expense budget for the Master Association, including reserves, shall be reviewed and analyzed annually by the Board of the Master Association and revised periodically at the discretion of the Board of the Master Association, in order to reflect the actual operating expenses and required reserves of the Development which are the responsibility of the Master Association; provided that certain increases in Assessments by the Board of the Master Association shall be subject to the terms of Section 4.3(b). The operating expense budget for each Sub Association, including reserves, shall be reviewed and analyzed annually by the Board of the respective Sub Association and revised periodically at the discretion of the Board of the respective Sub Association, in order to reflect the actual operating expenses and required reserves of the Development which are the responsibility of the respective Sub Association. Declarant's obligation to pay for such Assessments for Units owned by Declarant may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Master Association and the Sub Association(s), as applicable.

(b) **Restrictions on Increases in Annual Assessments**. During each succeeding fiscal year of the Master Association, and notwithstanding anything to the contrary in this Declaration or the Bylaws, the following limitations shall apply to the Master Association Board's authority to increase Annual Assessments for the Master Association.

(1) **Increase in Annual Assessments up to Ten Percent (10%)**. The Master Association Board may impose an Annual Assessment that is up to ten percent (10%) greater than the Annual Assessment for the Master Association's preceding fiscal year with the approval of a simple majority of the Directors of the Master Association.

(2) **Increase in Annual Assessments of Between Ten Percent (10%) and Twenty Percent (20%)**. The Master Association Board may impose an Annual Assessment that is between ten percent (10%) and twenty percent (20%) greater than the Annual Assessment for the Master Association's preceding fiscal year only with the approval of no less than a supermajority of the Directors of the Master Association. During such time as there are five (5) Directors on the Board of the Master Association, such supermajority requirement shall mean four (4) out of the five (5) Directors of the Master Association must approve of such increase.

(3) **Increase in Annual Assessments of Greater Than Twenty Percent (20%)**. The Master Association Board shall not have the authority to impose an Annual Assessment that is more than twenty percent (20%) greater than the Annual Assessment for the Master Association's preceding fiscal year without the approval of a supermajority of the Directors of the Master Association and without the approval of at least a majority of a quorum of Market-Rate Unit Owners and the approval of at least a majority of a quorum of Below Market Rate Unit Owners at a meeting or election of the Master Association at which a quorum of Market-Rate Unit Owners and a quorum of Below Market Rate Unit Owners was present in accordance with Section 4.3(b)(3)(i). Any meeting or election of the Master Association for the purpose of voting to increase Annual Assessments as described in this Section 4.3 shall be conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such election and voting of the Unit Owners regarding Assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130.

(i) **Quorum for Member Vote to Increase Annual Assessments By Greater Than Twenty Percent (20%).** For purposes of a meeting or election of the membership Master Association pursuant to Section 4.3(b)(3), there must be both (A) a quorum of Market-Rate Unit Owners, which quorum shall be more than fifty percent (50%) of the Market-Rate Unit Owners and (B) a quorum of Below Market Rate Unit Owners, which quorum must be more than fifty percent (50%) of the Below Market Rate Unit Owners.

(4) **Assessments for Emergency Situations**. This Section 4.3(b) shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Master Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Master Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget for the Master Association (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to why the expense was not or could not have been reasonably foreseen in the budgeting process and such resolution shall be distributed to the Members with the notice of Assessment)

(5) Subject to the specific terms of this Section 4.3(b), the Board must comply with the provisions of Civil Code Sections 5600-5615 prior to any increase in Annual Assessments.

(c) The limitations on increases in Annual Assessments described in Section 4.3(b) above shall apply only the Master Association, and not increases in Annual Assessments imposed by the Sub Associations. Each Sub Association may impose increases in Annual Assessments subject to the limitations described in Civil Code Section 5605, and all related notice and approval requirements (except for Assessments in Emergency Situations, which shall be subject to Civil Code Section 5610).

(d) As long as the Master Association or Sub Associations seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Taxation Code Section 23701t and any amendments thereto, then the Boards of the Master Association and the Sub Associations shall prepare its annual budget and otherwise conduct the business of the Master Association and the Sub Associations in such a manner consistent with federal and state requirements for such tax exempt status.

(e) Unless the Master Association and the Sub Associations are exempt from Federal and State of California income taxes, all reserves shall be accounted for as contributions to the capital of the respective Association and as trust funds segregated from the regular income of the respective Association or in such other manner authorized by law or regulation of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income to the respective Association.

**Section 4.4 Exemption from Assessments for Uncompleted Facilities and Budget Items Related to Occupancy.** Notwithstanding the provisions of Sections 4.3 and 4.8, the Board of each of the Master Association and the Sub Association may exempt all Unit Owners in their respective association if Section 4.4(a) is satisfied, and may exempt each Owner of a Unit which satisfies Section 4.4(b), from the payment of a portion of the Annual Assessment levied by the reach respective Association against that Unit as described in those paragraphs.

(a) **Common Area; Uncompleted Facilities.** Each of the Master Association and Sub Associations may exempt from its Assessments those portions which are for the purpose of defraying Common Expenses and reserves directly attributable to the existence of Common Area facilities and improvements that are not complete at the time such Assessments commence. Any such exemption shall be in effect only until the first to occur of the following events: (i) a notice of completion of such Common Area facility or improvement is recorded; (ii) the Common Area facility or improvement has been placed into use; or (iii) the Common Area facility or improvement is installed and no one other than the Master Association or respective Sub Association has been obligated to maintain the Common Area facility or improvement.

(b) **Budget Items Related to Occupancy.** Each of the Master Association and Sub Associations may exempt from Assessments payable by Declarant for any Condominiums owned by Declarant or its successor portions of those budgeted line items for Common Expenses that are attributable to use and occupancy of Condominiums. Any such exemption shall be in effect with respect to a Residential Unit only until (a) close of escrow for the applicable Residential Unit, or (b) occupancy of the applicable Residential Unit, whichever first occurs. Any such exemption shall be in effect with respect to a Commercial Unit only until the operation of businesses in the applicable Commercial Unit. For illustration purposes and not limitation, examples of items that may be subject to this exemption are expenses for water, sewer, gas, electricity, utilities related to elevator operation, heating ventilation and air conditioning, lighting, trash facilities and removal, telecommunication, internet, cable or satellite

television, fees not incurred by the Master Association or Sub Associations for custodial or maintenance services, property management fees (should the subject association be charged based upon occupancy) and inspection costs for any utility facilities solely servicing the unoccupied Residential Units or Commercial Units.

**Section 4.5 Special Assessments.**

**(a)** In addition to the Annual Assessment authorized above, the Master Association and each Sub Association may levy, in any fiscal year, a Special Assessment(s) applicable to that year only, for the purpose of defraying, in whole or in part, the Common Expenses of the respective Master Association or Sub Association for such fiscal year (including, but not limited to, unanticipated delinquencies, costs of construction and unexpected repairs, replacement or reconstruction of capital improvements in or on the Common Area including fixtures and personal property related thereto); provided that certain Special Assessment(s) by the Board of the Master Association shall be subject to the terms of Section 4.5(b).

**(b) Restrictions on Certain Special Assessments**. During each succeeding fiscal year of the Master Association, and notwithstanding anything to the contrary in this Declaration or the Bylaws, the following limitations shall apply to the Master Association Board's authority to impose Special Assessments for the Master Association.

**(1) Aggregate Special Assessments Between Up to Three Percent (3%).** The Board of Directors of the Master Association shall have the authority to impose Special Assessments during any fiscal year in an aggregate amount of up to three percent (3%) of the budgeted gross expenditures of the Master Association for that fiscal year with the approval of a simple majority of the Board of Directors of the Master Association.

**(2) Aggregate Special Assessments Between Three Percent (3%) and Five Percent (5%).** The Board of Directors of the Master Association shall have the authority to impose Special Assessments during any fiscal year in an aggregate amount between three percent (3%) and five percent (5%) of the budgeted gross expenditures of the Master Association for that fiscal year only with the approval of no less than a supermajority of the Directors of the Master Association. During such time as there are five (5) Directors on the Board of the Master Association, such supermajority requirement shall mean four (4) out of the five (5) Directors of the Master Association must approve of such Special Assessments.

**(3) Aggregate Special Assessments More Than Five Percent (5%).** The Master Association Board shall not have the authority to impose Special Assessments during any fiscal year in an aggregate amount of more than five percent (5%) of the budgeted gross expenditures of the Master Association for that fiscal year without the approval of a supermajority of the Directors of the Master Association and without the approval of at least a majority of a quorum of Market-Rate Unit Owners and the approval of at least a majority of a quorum of Below Market Rate Unit Owners at a meeting or election of the Master Association at which a quorum of Market-Rate Unit Owners and a quorum of Below Market Rate Unit Owners was present in accordance with Section 4.5(b)(3)(i). Any meeting or election of the Master Association for the purpose of voting to impose a Special Assessment as described in this Section 4.5(b)(3) shall be conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such election and voting of the Unit Owners regarding such Special Assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130.

**(i) Quorum for Member Vote to Impose Aggregate Special Assessments More Than Five Percent (5%).** For purposes of a meeting or election of the membership

Master Association pursuant to Section 4.5(b)(3), there must be both (A) a quorum of Market-Rate Unit Owners, which quorum shall be more than fifty percent (50%) of the Market-Rate Unit Owners and (B) a quorum of Below Market Rate Unit Owners, which quorum must be more than fifty percent (50%) of the Below Market Rate Unit Owners.

(4) **Special Assessments for Emergency Situations**. This Section shall not limit Special Assessments necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Master Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Master Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget (prior to the imposition or collection of a Special Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to why the expense was not or could not have been reasonably foreseen in the budgeting process and such resolution shall be distributed to the Members with the notice of Assessment).

(5) Subject to the specific terms of this Section 4.5(b), the Board must comply with the provisions of Civil Code Sections 5600-5615 prior to the imposition of any such Special Assessments.

**(c)** The limitations on Special Assessments described in Section 4.5(b) above shall apply only the Master Association, and not Special Assessments imposed by the Sub Associations. Each Sub Association may impose Special Assessments subject to the limitations described in Civil Code Section 5605, and all related notice and approval requirements (except for Special Assessments in Emergency Situations, which shall be subject to Civil Code Section 5610).

**(d)** Unless exempt from Federal and State of California income taxes, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied, or otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, to the extent possible, its taxation as income to the Association.

**Section 4.6 Individual Special Assessment.** The Master Association shall have the authority to levy an Individual Special Assessment, pursuant to the procedures contained in the Governing Documents, against any Condominium or any Owner in order to (i) impose fines, penalties or take disciplinary action against any Owner for violation of any provision of the Governing Documents, (ii) obtain reimbursement of funds expended by the Association, including, without limitation, 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, Invitees or pets in violation of the Governing Documents, or (iii) to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit and/or occupant into compliance with the provisions of this Declaration and the Governing Documents. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association; provided that payment of the deductible amount of any such insurance policy shall be the responsibility of the Owner. 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 shall promptly refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association shall have the authority to enforce the delinquent assessment as described in Sections 4.15 through 4.17 of this Declaration, subject only to the directly applicable limitations required by Civil Code

Section 5725. The Association shall have the authority to adopt a reasonable schedule of Individual Special Assessments for any violation of the Governing Documents. If after notice and hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose such additional assessment each time the violation is repeated and enforce such assessment as provided herein. A hearing committee may be established by the Board to administer the foregoing.

**Section 4.7 Notice for Adoption of Annual or Special Assessment; Notice of Increase in Annual Assessments and Special Assessments.**

**(a)** Any action authorized to be taken by the Members of the Master Association under Sections 4.3(b) and 4.5(b), shall be taken at a meeting called for that purpose, written notice of which shall be mailed by first class mail, postage prepaid to each Member at the address of each Unit owned by such Member within the Development not less than ten (10) days nor more than ninety (90) days prior to the meeting. The proposed action may also be taken without a meeting pursuant to the provisions of Corporations Code Section 7513. Any voting of the Owners regarding Assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Sections 5100-5130.

**(b)** The Master Association and Sub Associations shall provide notice to their Members of any increase in the Annual Assessment or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. Such notice shall be provided either personally or by first-mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable.

**Section 4.8 Division of Assessments; Master Association Assessments; Sub Association Assessments.** Most of the Assessments for the Development shall be allocated and assessed to the Unit Owners by the Master Association. However, certain Assessments shall be allocated and assessed to the Owners of the Market-Rate Units by the MIRA I Sub Association, and certain Assessments shall be allocated and assessed to the Owners of the Below Market Rate Units by the MIRA II Sub Association.

**(a) Master Association Assessments**. Master Association Assessments apply to all Units in the Development; provided tbat Assessments for Residential Common Expenses only apply to the Residential Units in the Development and not the Commercial Units. All Annual Assessments and Special Assessments of the Master Association shall be divided among, allocated and assessed to the Unit Owners as described in this Section 4.8(a).

**(1)** Annual Assessments and Special Assessments for General Common Expenses and Residential Common Expenses, as such terms are defined in this Section 4.8(a) and itemized in the Operating Budget for the Master Association (the "Master Association Budget"), shall be allocated and assessed to each Unit Owner as set forth below and as more specifically itemized in the Master Association Budget. Those Owners that obtain a license providing the right to have an authorized vehicle parked in the Development shall be required to pay an additional assessment for Parking Garage Expenses, as described in Section 4.8(a)(4) below.

**(2)** General Common Expenses are those expenses relating to both the Residential Units and Commercial Units and Common Area benefitting both the Residential Unit Owners and Commercial Unit Owners. The General Common Expenses are those included in the "General Budget" component of the Master Association Budget. General Common Expenses shall be allocated and assessed to each Unit Owner as set forth below and as more specifically itemized in the Master Association Budget. The General Common Expenses shall be divided and allocated equally among all

Unit Owners, except for those General Common Expenses designated as "Variable Expenses" in the General Budget which shall be allocated to the Units as described below. Operating expenses and reserves for the Variable Expenses in the General Budget shall be prorated and allocated to the Units using the "Grouping" method, whereby Units have been grouped together according to approximate square footage. Each Unit will be classified in an Assessment Group according to the Unit's approximate square footage, and shall be allocated Assessments for Variable Expenses for that particular Group, as shown on Exhibit B hereto. All Units in an Assessment Group shall pay the same Annual Assessments. The Assessment Groups are shown in the Master Association Budget and referenced on Exhibit B hereto. There is also a separate Assessment Group(s) for the Commercial Units, as indicated in the Master Association Budget. Reference is made to the Master Association Budget for further detail regarding the equal General Common Expenses and Variable Expenses.

(3) Residential Common Expenses are those expenses relating only to the Residential Units and Common Area benefitting the Residential Unit Owners. The Residential Common Expenses are those included in the "Residential Budget" component of the Master Association Budget. Residential Common Expenses shall be allocated and assessed to each Residential Unit Owner as set forth below and as more specifically itemized in the Master Association Budget. The Residential Common Expenses shall be divided and allocated equally among the Residential Unit Owners, except for those Residential Common Expenses designated as "Variable Expenses" in the Residential Budget, which shall be allocated to the Residential Units as described below. Operating expenses and reserves for the Variable Expenses in the Residential Budget shall be prorated and allocated to the Residential Units using the "Grouping" method, whereby Residential Units have been grouped together according to approximate square footage. Each Residential Unit will be classified in an Assessment Group according to the Unit's approximate square footage, and shall be allocated Assessments for Variable Expenses for that particular Group, as shown on Exhibit B hereto. All Units in an Assessment Group shall pay the same Annual Assessments. The Assessment Groups are shown in the Master Association Budget and referenced on Exhibit B hereto. Reference is made to the Master Association budget for further detail regarding the equal Residential Common Expenses and Variable Expenses.

(4) "Parking Garage Expenses. Those Owners that obtain a license providing the right to have an authorized vehicle parked in the garage of the Development as described in Section 2.11 shall be required to pay an additional assessment for expenses related to the garage and parking areas in the Development ("Parking Garage Expenses"), as further described in the "Garage Cost Center" or "Parking Garage Budget" component of the Master Association Budget and in any parking license agreement between each such Owner and the Declarant or the Master Association. Reference is made to the Master Association Budget for further detail concerning the Parking Garage Expenses. Each Owner that obtains license providing the right to have a vehicle parked in the garage of the Development shall be required to pay, for each vehicle such Owner has the right to have parked, the per-vehicle assessment for Parking Garage Expenses described in the Parking Garage Budget and in any parking license agreement between each such Owner and the Declarant or the Association. Those Owners that do not obtain the right to have a vehicle parked in the garage of the Development by entering into a parking license agreement with Declarant or the Association shall not have a right to have a vehicle parked in the Development, and such Owners shall not be required to pay Parking Garage Expenses. Notwithstanding the foregoing, there is certain Common Area equipment, machinery, utilities, HVAC, electrical rooms, mechanical rooms, and other improvements and facilities in the garage that serve more than just the garage and parking areas, and the costs and expenses related to such areas, in whole or in part, shall be borne generally by the Owners as Residential Common Expenses or General Common Expenses, as applicable, and shall not be designated as Parking Garage Expenses. Reference is made to the Parking Garage Budget for further detail concerning the Parking Garage Expenses.

(i) The Parking Garage Expenses are a "cost center," and the funds collected by the Master Association for Parking Garage Expenses shall be subject to the following rules and procedures: (1) separate accounting of Parking Garage Expenses cost center funds, (2) separate annual review of Parking Garage Expenses cost center funds, (3) separate disclosure to the Owners of Units with parking rights of the reserves for Parking Garage Expenses cost center funds, and (4) separate reserve study for Parking Garage Expenses cost center funds. Costs for separate accounting and related procedures for the Parking Garage Expenses cost center funds described above in this paragraph shall be separated from other accounting costs related to the Master Association Budget, and shall be paid only by those Owners of Units with parking licenses.

(ii) Parking Garage Expenses cost center funds are designated for use for expenses related to the parking areas in the garage of the Development. If the Board of the Master Association determines that Parking Garage Expenses cost center funds may be temporarily used for general purposes related to Common Expenses of the Master Association, then the following rules shall apply to such uses: (1) there must be reasonably detailed documentation of such uses, (2) there must be disclosure of such uses to the Owners of Units with the exclusive right to use a parking space in the Development, (3) any Parking Garage Expenses cost center funds that are used for general purposes related to Common Expenses of the Master Association shall be replenished.

(b) **Sub Association Assessments**. Sub Association Assessments apply to the Residential Units in the Sub Associations. Each Sub Association shall have its own Sub Association Assessments that apply only to the Residential Units in that Sub Association. For example, the Assessments for MIRA I Sub Association benefit the Market-Rate Units and related Common Area. Similarly, the Assessments for MIRA II Sub Association benefit the Below Market Rate Units and related Common Area. The Commercial Units shall not be required to pay Sub Association Assessments. All Annual Assessments and Special Assessments of each Sub Association shall be divided among, allocated and assessed to the Unit Owners in that Sub Association as described in this Section 4.8(b).

(1) Sub Association Expenses are those expenses relating to the Residential Units and Common Area benefitting Owners of Residential Units in a particular Sub Association. The Sub Association Expenses are those included in the "Sub Association Budget" for each Sub Association. The Sub Association Expenses for a Sub Association shall be allocated and assessed to each Residential Unit Owner in that Sub Association as set forth below and as more specifically itemized in the Sub Association Budget for each Sub Association. The Sub Association Expenses shall be divided and allocated equally among the Residential Unit Owners in a Sub Association, except for those Sub Association Expenses designated as "Variable Expenses" in the Sub Association Budget, which shall be allocated as described below. Operating expenses and reserves for the Variable Expenses in a Sub Association Budget shall be prorated and allocated to the Residential Units in that Sub Association using the "Grouping" method, whereby Residential Units have been grouped together according to approximate square footage. Each Residential Unit will be classified in an Assessment Group according to the Unit's approximate square footage, and shall be allocated Assessments for Variable Expenses for that particular Group, as shown on Exhibit B hereto. All Units in an Assessment Group shall pay the same Annual Assessments. There are 18 Assessment Groups for the Market-Rate Units in the MIRA I Sub Association, as shown in the Sub Association Budget for MIRA I Sub Association and on Exhibit B hereto. There are 8 Assessment Groups for the Below Market Rate Units in the MIRA II Sub Association, as shown in the Sub Association Budget for MIRA II Sub Association and on Exhibit B hereto. Reference is made to the Sub Association Budget each Sub Association for further detail regarding the Sub Association Expenses and Variable Expenses.

(c) The initial Operating Budget for the Development (including the Master Association Budget, Sub Association Budgets, Parking Garage Budget) submitted by Declarant and

reviewed by the DRE as described above shall be in effect for at least twelve months after the close of escrow for sale of the first Condominium Unit in the Development by Declarant. After the twelve months, the Master Association Budget and Parking Garage Budget, including reserves, shall be reviewed annually by the Master Association Board and revised at the discretion of the Master Association Board in order to reflect the actual operating expenses and required reserves of the Development which are the responsibility of the Master Association; provided that certain increases in Annual Assessments and Special Assessments by the Master Association shall be limited as described in Sections 4.3(b) and 4.4(b).

**(d)** Annual Assessments shall be charged to and collected from each Owner on a monthly basis at the rate of one-twelfth (1/12) of the Annual Assessment charged with respect to each Condominium Unit.

**(e)** Special Assessments, other than an Individual Special Assessments, shall be levied against each of the Owners in the same proportion as Annual Assessments and may be enforced in the same manner as an Annual Assessment; provided that a Special Assessment for the rebuilding or major repair of the Common Area shall be assessed to each Unit according to the percentage interest of undivided interest in the Common Area shown for each Unit on the Condominium Plan. Special Assessments shall be charged to and collected from the Owners in either one (1) single payment, or in monthly payments, as determined by the Board of the Association imposing such Special Assessment.

**Section 4.9** **Date of Commencement of Annual Assessment.** The Annual Assessments provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium from Declarant to an Owner under authority of a Public Report issued by the DRE. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Annual Assessments may be temporarily reduced or abated pursuant to a subsidy or maintenance agreement entered into between Declarant and Association, or as described in Section 4.4 of this Declaration.

**Section 4.10** **Failure to Establish Annual Assessment.** Subject to the provisions of Section 4.3 hereof, the Board of the Master Association and the Boards of the Sub Associations shall each determine and fix the amount of the Annual Assessment to be charged against each Unit in their respective association at least thirty (30) days in advance of each fiscal year of each Association. In the event that a Board fails or refuses to establish an Annual Assessment as required by this Section, the Annual Assessment for the immediately preceding fiscal year shall be the Annual Assessment for the fiscal year as to which no Annual Assessment has been established unless an increase or decrease therein is approved by a majority of the Members of each of Class A and Class B or, in the event Class B memberships have been converted to Class A memberships, the vote or written consent of a majority of the total voting power of the Association as well as the vote or written consent of a majority of the total voting power of Members other than Declarant; provided that only the Members of a Sub Association shall be permitted to vote with respect to Assessments for that Sub Association. Notwithstanding the foregoing, increases in Annual Assessments of the Master Association shall be limited as described in Section 4.3(b).

**Section 4.11** **Annual Notice of Assessments and Foreclosure Rights.** The Master Association and Sub Associations shall each distribute a copy of the pro forma operating budget (or a summary to their respective Members, as provided for in Civil Code Section 5320(a)(2)) within thirty (30) days to ninety (90) days before the end of the Association's fiscal year, as required by Civil Code Section 5300, and as further set forth in the Bylaws. The pro forma operating budget (or summary thereof) shall at a minimum include: (i) all of the information and statements required by Civil Code Section 5300(b) (including, without limitation, all of the information concerning the particular

Association's reserves), and (ii) the disclosures required by Civil Code Sections 5570 and 5300(e) (Assessment and Reserve Funding Disclosure Summary Form). In addition, the written notice described in Sections 5730 and 5310(a)(6) of the Civil Code (notice regarding Foreclosure rights of the Association) shall be provided to each member of the Association within thirty (30) days to ninety (90) days before the end of the Association's fiscal year. This notice shall be printed in at least 12-point type.

**Section 4.12 Certificate as to Payment.** The Master Association and Sub Associations shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the respective association setting forth whether the Assessments on a specified Unit have been paid. Such certificate shall be deemed to be conclusive evidence of the payment of such Assessments to the extent stated therein to have been previously paid.

The Master Association shall have all of the rights, duties and obligations described in Section 4.13 through 4.18 below concerning Assessments for the Master Association and the Units in the Master Association. Similarly, each Sub Association shall also have all of the rights, duties and obligations described in Sections 4.13 through 4.18 below concerning Assessments for that Sub Association and the Units in that Sub Association. The terms "Association" or "Board" as used in Sections 4.13 through 4.18 below shall refer to the Master Association and/or either Sub Association, and the Board(s) thereof, as applicable.

**Section 4.13 Delinquency of Assessment; Right to Lien.** All Annual and Special Assessments, or monthly installments thereof, levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. For each delinquent Assessment, or monthly installment thereof, the Association may recover: (i) reasonable costs incurred in collecting the delinquent Assessment, or part thereof, including reasonable attorney's fees, (ii) a late charge not to exceed the then current Secured Overnight Financing Rate (SOFR) plus ten percent (10%) of the delinquent Assessment or ten dollars ($10.00), whichever is greater, and (iii) interest on all sums imposed herein, including the delinquent Assessment, reasonable costs of collection and late charges at the then current Secured Overnight Financing Rate (SOFR) plus twelve percent (12%) per annum commencing thirty (30) days after the Assessment becomes due. The Association shall have the right to record a lien against the delinquent Unit Owner and enforce such lien and foreclose upon the Unit Owner's interest in the Unit in accordance with the procedures described in Civil Code Sections 5650-5740 and 4040, as further described in Sections 4.14 and 4.15 of this Declaration. The Association's right shall be subject to the limitations imposed by Civil Code Sections 5705-5720 with respect to delinquent assessments that are less than One Thousand Eight Hundred Dollars ($1,800).

**Section 4.14 Transfer of Condominium by Sale or Foreclosure; Rights of First Mortgagees.** Sale or transfer of any Unit shall not affect the Assessment lien. However, the Foreclosure of a First Mortgage, or the sale of any Unit pursuant to Foreclosure of a First Mortgage, shall extinguish the Assessment lien of any Assessments on that Unit (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such Foreclosure or sale pursuant to Foreclosure (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). No sale or transfer shall relieve such Unit from Assessments thereafter becoming due or from the lien thereof. Where the Mortgagee of a First Mortgage or other buyer of a Unit obtains title to such Unit as a result of Foreclosure, such acquirer of title, and its successors and assigns, shall not be liable for Assessments or other charges of the Association chargeable to such Unit that became due prior to the acquisition of title to such Unit by such acquirer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage), except for a share of such Assessments or other charges resulting from a reallocation of Assessments which are made against all Unit. The unpaid share of such Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Unit Owners including such acquirer,

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

**Section 4.15 Procedure for Perfection of Lien of Assessment.** In the event any Assessment or monthly installment of an Annual Assessment is not paid within thirty (30) days after the day upon which it becomes due, the Board may deliver a "Notice of Delinquent Assessment" to the Unit Owner of the Unit assessed and may cause a copy of said Notice to be recorded in the Official Records of the City and County of San Francisco. Prior to recording the Notice of Delinquent Assessment, the Association shall provide the Unit Owner with ninety (90) days prior written notice in accordance with the provisions of Civil Code Sections 5650-5740 and 4040, and shall offer to the Unit Owner and, if so requested by the Unit Owner, shall participate in "meet and confer" procedures pursuant to Civil Code Section 5900-5920 and any applicable successor statutes. Said Notice of Delinquent Assessment shall state the amount of the Assessment then due and unpaid which shall include interest, costs and reasonable attorneys fees, a legal description of the Unit against which such Assessment has been levied, the name of the record Unit Owner of such Unit and the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial Foreclosure (if the Association so elects). Such Notice of Delinquent Assessment shall be signed by a representative designated by the Board, and mailed in the manner set forth in Section 2924(b) of the Civil Code, to all record Unit Owners of the Unit assessed, no later than ten (10) calendar days after recordation. When such a Notice of Delinquent Assessment has been recorded, the Assessment described therein shall constitute a lien upon the Unit identified therein which lien shall be prior in right to all other liens thereafter arising except for all taxes, assessments or other levies which by law would be prior thereto and except for the lien of any Mortgage recorded prior to the date any such Assessment became due. Such Assessment lien shall be in favor of the Association and shall be for the benefit of all Unit Owners. If the delinquent Assessment or installment and related charges are paid or otherwise satisfied, the Association shall send to the Unit Owner a "Notice of Satisfaction and Release of Lien" and shall record same in the Official Records of the City and County of San Francisco.

**Section 4.16 Enforcement of Lien of Assessment.** After the expiration of thirty (30) days following the recording of the lien of any Assessment established pursuant to Section 4.15, and subject to the requirements of Civil Code Sections 5650-5740 and 4040, and other applicable requirements, the Board may enforce the lien by filing an action for judicial Foreclosure or, if the Notice of Delinquent Assessment contains the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial Foreclosure, by recording a "Notice of Default" in the form described in Civil Code Section 2924c(b)(1) to commence nonjudicial Foreclosure. Such nonjudicial Foreclosure is to be conducted in accordance with the requirements of Sections 2924-2924h of the California Civil Code applicable to the exercise of nonjudicial Foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at a Foreclosure or trustee's sale and to acquire, hold, mortgage and convey the same. If the default is cured before the sale, or before completing a judicial Foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien and, upon receipt of a written request by the Unit Owner, a "Notice of Rescission of the Declaration of Default and Demand for Sale."

(a) **Right of Redemption**. Pursuant to California Civil Code Section 5715(b), 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 Unit may be redeemed from a

Foreclosure sale under this paragraph ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's Foreclosure of a Unit in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in Civil Code Section 5715.

The provisions in Section 4.15 through 4.18 above are intended to comply with the requirements of Civil Code Sections 5650-5740 and 4040 in effect as of the date of this Declaration. If said Civil Code sections are amended or rescinded in any manner the provisions of Sections 4.15 through 4.18 above shall automatically be amended or rescinded in the same manner. The Board should confirm and comply with the current statutory requirements under these Civil Code Sections before initiating any Assessment lien or Foreclosure procedures.

**Section 4.17 Enforcement of Assessment by Suit.** The Association may, in its own name, commence and maintain a suit at law against any Unit Owner or Unit Owners personally obligated to pay Assessments for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquent Assessments, together with processing fees, interest thereon, costs of collection, court costs and reasonable attorney's fees in such amount as the court may determine with respect to such delinquent Unit Owner. Suit to recover judgment for unpaid Assessments shall be maintained without foreclosing or waiving any lien for such Assessments created pursuant to this Declaration. In any action instituted by the Association to collect delinquent Assessments, accompanying late charges and/or interest, the prevailing party shall be entitled to recover costs and reasonable attorney's fees.

**Section 4.18 Suspension for Non-Payment of Assessment.** The Board may suspend the voting rights and right to use the Common Area (including, without limitation, the right to use the Residential Facilities, vehicle parking, bicycle parking, storage or other portion of the Common Area) of a Member (including, an Owner or Occupant of a Unit, and their Invitees) who is in default in the payment of any Assessment or in violation of any Association Rule, after notice to such Member and an opportunity for a hearing before the Board which satisfies the minimum requirements of Section 7341 of the Corporations Code and as provided in the Bylaws.

**Section 4.19 Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or any portion thereof, the personal property of the Master Association or the Development as a whole, rather than against the Units, said taxes shall be included in the Master Association Assessments made under the provisions of Section 4.1, and, if necessary, a Special Assessment may be levied by the Master Association against the Units in an amount equal to said taxes to be paid in two installments, each thirty (30) days prior to the due date of the respective tax installment, which Special Assessment shall not be subject to the limitations described in Section 4.4(b).

Each Unit Owner is obligated to pay any taxes or assessments assessed by the County Assessor against the Unit Owner's Unit and personal property. Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Unit (in addition to any supplemental tax assessments levied against any Unit as a result of the transfer of title from Declarant to the first purchaser), the non-segregated tax amount shall be allocated among all the Units in accordance with an allocation method as may be selected by Declarant or by the Board. Unless paid directly by the Unit Owner, each Unit Owner shall pay the Unit Owner's allocable share to the Association or Declarant in a timely and proper manner so that the Master Association or Declarant may make the non-segregated tax payment in a timely and proper manner. The Master Association may levy a Special Assessment against the Condominiums to collect the non-segregated tax amount and/or otherwise charge each Owner for its allocable share of such non-segregated tax amounts. Any Unit Owner who breaches the Unit Owner's duty to pay the Unit Owner's allocable share in a timely and proper manner shall be liable for

any penalties, interest, fees or other such costs incurred as a result of the breach and the Master Association may levy an Individual Special Assessment against the Unit Owner's Unit to collect the amount, including any penalties, interest, fees or other costs.

**Section 4.20** **Review of Accounts, Revenues and Expenses**. As provided in Civil Code Section 5500, the Board shall, on at least a monthly basis:

**(a)** Review a current reconciliation of the subject Association's operating accounts.

**(b)** Review a current reconciliation of the subject Association's reserve accounts.

**(c)** Review the current year's actual operating revenues and expenses compared to the current year's budget.

**(d)** Review the latest account statements prepared by the financial institutions where the subject Association has its operating and reserve accounts.

**(e)** Review an income and expense statement for the subject Association's operating and reserve accounts.

**(f)** Review the check register, monthly general ledger, and delinquent Assessment receivable reports.

For purposes of this Section 4.20, "review" shall include preparing reasonable documentation of such review.

**Section 4.21** **Expenditure of Reserve Funds.** The Board of the Master Association shall govern its reserve funds, and the Boards of the Sub Associations shall each govern their own respective reserve funds, as described this Section 4.21. In accordance with Sections 5510-5520 of the Civil Code, the Board of the Master Association and the Board of each Sub Association shall not expend funds designated as reserve funds for any purpose other than: (i) the repair, restoration, replacement or maintenance of major components for which such Association is obligated and for which the reserve fund was established, or (ii) litigation involving the purposes set forth in (i) above. Notwithstanding the provisions of (i) and (ii) above, such Board:

**(a)** May authorize the temporary transfer of money from the reserve account to such Association's operating account to meet short term cash flow requirements or other expenses, if such Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If such Board authorizes the transfer, such Board shall issue a written finding, recorded in such Board's minutes, explaining the reasons the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

**(b)** Shall cause the transferred funds to be restored to the reserve account within one year of the date of the initial transfer; except that such Board may, after giving the same notice required for considering a transfer, and upon, making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Development, temporarily delay the restoration.

**(c)** Shall exercise prudent fiscal management in maintaining the integrity of the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Such Board may, at its discretion, extend the date the payment on the Special Assessment is due; however, any extension shall not prevent such Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment. Any such Special Assessments shall be subject to the limitations specified in Section 4.5.

**(d)** Subject to the provisions of Article 10 below, when the decision is made to use reserve funds or to temporarily transfer funds from the reserve account to pay for litigation, such Association shall notify its Members of that decision in the next available mailing to all its Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. Such Association shall make an accounting of such expenses on at least a quarterly basis, and such accounting shall be made available for inspection by its Members at such Association's office.

**(e)** The signatures of at least two (2) persons, who shall be members of such Board, or one officer who is not a member of such Board and one member of such Board, shall be required for the withdrawal of moneys from the reserve account.

**Section 4.22 Reserve Studies.** At least once every three years, the Board of the Master Association shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Master Association and Sub Associations are obliged to repair, replace, restore or maintain, as part of a study of the reserve account requirements for the Development, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the combined gross budgets of the Master Association and Sub Associations for any fiscal year, which excludes any Association's reserve account for that period. In addition, the Board of the Master Association shall annually review, or cause to be reviewed, the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review. The reserve account study shall at a minimum include the items and components set forth in Civil Code Sections 5550-5570. The Master Association shall reasonably divide and allocate the costs of such reserve study among the Master Association and Sub Associations, and each of the Master Association and the Sub Associations shall consider and implement necessary adjustments to its analysis of their respective reserve account requirements as a result of that review.

## ARTICLE 5
## INSPECTION, MAINTENANCE, REPAIR AND IMPROVEMENT

It is the intent of Declarant that the Master Association perform all inspections, maintenance, repair, restoration and replacement for the Common Area of the entire Development and all related facilities, systems, areas and improvements described in this Article 5. Therefore the Master Association shall have all of the rights, duties and obligations of the Association described in this Article 5. References to the "Association" and the "Board" in this Article 5 shall mean and refer to the Master Association and its Board. Notwithstanding the foregoing, there are certain limited Common Area improvements and related areas and facilities that are the responsibility of the Sub Associations to inspect, maintain, repair, restore and replace, as described in Section 3.3(a). With respect to such limited Common Area improvements and related areas and facilities only, each Sub Association shall have the rights, duties and obligations of the Association described in this Article 5. With respect to such limited Common Area improvements and related areas and facilities only, references to the "Association" and the "Board" in this Article 5 shall mean and refer to the applicable Sub Association. Except for those certain limited Common Area improvements and related areas and facilities that are the responsibility of the Sub Associations to inspect, maintain, repair, restore and replace, as described in Section 3.3(a), all other

Common Area of the entire Development and all related facilities, systems, areas and improvements described in this Article 5 shall be the responsibility of the Master Association. For avoidance of doubt, unless a Common Area improvement and related area and facility is specifically listed in Section 3.3(a) as the responsibility of a Sub Association, such Common Area improvement and related area and facility shall be the responsibility of the Master Association.

**Section 5.1 Association's Rights and Obligations to Inspect, Maintain and Repair the Development.** Coincident with the first conveyance of a Unit by Declarant, the Association shall inspect, repair, restore, replace and maintain in good condition and appearance all of the Common Area and all facilities, improvements, furnishings, equipment, utilities, water systems, sewers, any and all drains or drainage systems not maintained by a public entity, utility company or improvement district, roadways, walkways and related street, sidewalk and pedestrian lighting not maintained by a public entity, utility company or improvement district, landscaping (except landscaping within Exclusive Use Common Area decks, terraces or balconies) and related improvements and facilities thereon, and all property that may be acquired by the Association, including, without limitation, foundations, siding, trim, roofs, exterior finishes on exterior doors to units (other than the hardware thereon), elevators, amenities, Residential Facilities and related improvements and equipment, lobbies, Common Area hallways and corridors, loading docks, life safety equipment and facilities, exterior building staircases, trash, recycling and compost collection areas and related improvements, garage and parking areas, Common Area roof deck areas, courtyards, walkways, planters and irrigation systems and related improvements. The Association's responsibility for inspection, maintenance, repair and replacement described in this Section 5.1 shall include, without limitation, performance of any inspection, maintenance and repair described in any owners association handbook, or any applicable maintenance manual or manufacturers manual. Without limitation of the foregoing, the Association shall perform at least the minimum cleaning, inspection, maintenance, repair and replacement obligations required of the Association on Exhibit C attached hereto, and by this reference made a part hereof.

**(a)** The Association's obligation for inspection, maintenance, repair and replacement described in this Section 5.1 shall also include (i) those portions of the streets and sidewalks, and improvements and landscaping thereon, that are located on the Property and that are not inspected, maintained and repaired by a public entity, utility company or improvement district, and (ii) those Streetscape Improvements constructed by Declarant in connection with the construction of the Development pursuant to DDA (Section 9.04 and Attachment 6, Section G) that are not inspected, maintained and repaired by a public entity, utility company or improvement district.

**(b)** The Association shall maintain and repair the structural components of the Common Area associated with the Exclusive Use Common Area decks or terraces, including, without limitation, the floor sealing and any associated waterproofing, sealant or elastomeric membranes below the surface of the flooring; provided, however, that the Owner of the Unit to which any Exclusive Use Common Area deck or terrace is appurtenant shall maintain and repair any built-up or raised decking, tile, brick or paver covering such deck or terrace, and any waterproofing treatment to the surface of such built-up or raised decking, tile, brick or paver; provided, further, that each Unit Owner shall be responsible for routine maintenance and cleaning of any Exclusive Use Common Area deck or terrace area appurtenant to that Unit Owner's Unit, and shall keep any such Exclusive Use Common Area in good condition, clean and neat at all times, as further described in Section 5.2 below. The repair or replacement of any of the Condominium Building and any portion of the Common Area shall be of equal or greater grade or quality than the original installation. All maintenance and repair of the Condominium Building and any portion of the Common Area shall be performed by qualified professionals.

**(c)** In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Units,

Exclusive Use Common Areas and Common Area, the Association shall periodically inspect the exterior of the Condominium Building(s) and the Exclusive Use Common Area and Common Area improvements to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

**(d)** In furtherance of the Association's obligations described in this Section 5.1, the Board shall have the obligation to regularly and actively inspect, or cause to be inspected by a qualified professional, the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (including Exclusive Use Common Areas appurtenant to Unit Owners' Units, as described in Section 5.2 below), to determine the need for repairs, replacements, restorations and maintenance in order to keep the Common Area and all facilities, improvements, furnishings, equipment, landscaping in good repair, working order, condition and appearance. The Board shall keep a written record and documentation of the results of such inspections. For the period of ten (10) years immediately following substantial completion of the Development, the Board shall provide to Declarant at least on an annual basis a summary of the inspection(s). In the event the Board does not perform such inspections, Declarant may, after thirty (30) days prior notice to the Association, cause such inspection(s) on the Board's behalf. The Board shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to be performed by a qualified professional in a timely manner. In furtherance of the foregoing, the Association shall inspect, or cause to be inspected by a qualified professional, any Exclusive Use Common Area deck or terrace appurtenant to a Unit Owner's Unit to determine whether maintenance or repairs may be required. The Board shall have the authority to impose charges on a Unit Owner for any maintenance and repairs to an Owner's Unit or Exclusive Use Common Area appurtenant thereto performed by or at the direction of the Association, including, without limitation, costs for service personnel, contractors, Association management and staff, materials, parts, labor, and administrative costs.

**(e)** The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act, omission or neglect of an Owner or that Owner's guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his or her guests, co-inhabitants, Occupants, tenants or Invitees, except that if a repair or replacement is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs or replacements, and the responsible Owner shall pay any deductible (or portion thereof, as determined by the Board) pursuant to the insurance policy and the Association may impose an Individual Special Assessment on the responsible Owner in the amount of such deductible, as well as other costs related thereto, as further described in Section 4.6. If the responsible Owner fails to pay such deductible (or portion thereof, as determined by the Board), the Association may make such payment and shall charge the responsible Owner for all costs and fees associated with or arising from such nonpayment, which charge shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate permitted by law) until paid in full. The costs and expenses for any inspections, repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, co-inhabitants, tenants or Invitees, or the pets of an Owner or his guests, tenants or Invitees, which is not covered by insurance carried by the Association shall be made by the responsible Owner; provided that the Association shall perform or cause to be performed any such inspections, maintenance, repairs or replacements, and the Owner shall be responsible for all costs and expenses related thereto, including,

without limitation administrative costs of the Association. No such work shall be performed unless the Association approves the person performing the maintenance, repairs or replacements, which person shall be a qualified professional. The Association shall be entitled to charge the costs of inspection, maintenance, repair and replacements to the Common Areas arising out of or caused by the willful or negligent act, omission or neglect of an Owner or his guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his guests, Occupants, tenants or Invitees, to the responsible Unit Owner.

**(f)** If a Unit Owner fails to make any repairs or replacements for which that Unit Owner is responsible as provided herein this Article 5, then, upon the affirmative vote of a majority of the Board and after notice to the Unit Owner and an opportunity for a hearing before the Board, the Association shall have the right, but not the obligation, to perform such maintenance, repairs or replacements and, if necessary in connection therewith, to enter that Unit Owner's Unit, as further described in Section 5.2 below. The cost of such repairs or replacements shall be paid to the Association by said responsible Unit Owner, as further described in Section 5.2 below.

**Section 5.2** **Owner's Right and Obligation to Inspect, Maintain and Repair.** Except for those portions of the Development and Common Area which the Association is required to maintain and repair, each Unit Owner shall, at that Unit Owner's sole cost and expense, maintain and repair that Unit Owner's Unit and Exclusive Use Common Area physically appurtenant thereto, keeping the same in good condition and repair. Each Unit Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, that Unit Owner's Unit and Exclusive Use Common Area appurtenant thereto in order to maintain the Unit and such Exclusive Use Common Area in good repair, condition and appearance. Each Unit Owner's responsibility for inspection, maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any applicable owner's manual, maintenance manual or manufacturer's manual provided to the Owner by Declarant or its agents or the Association or property manager. Each Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, that Owner's Unit and any Exclusive Use Common Area deck or terrace area appurtenant thereto in order to maintain the Unit and such Exclusive Use Common Area in good repair, condition and appearance. Each Owner shall take no action that causes degradation, damage or puncturing to any flooring, wall or surface area of any deck or terrace area appurtenant to that Owner's Unit, and each owner shall be responsible for any such degradation, damage or puncturing caused by such Owner's action. Each Owner shall notify the Association promptly and without delay in the event such Owner discovers and damage, crack, leak, hole, degradation or other problem with the functioning of any window, door, sliding glass door, flooring, wall, surface area or other portion of a deck or terrace area appurtenant to that Owner's Unit. Each Owner shall promptly and without delay because any necessary maintenance, repair, replacements or restorations to that Owner's Unit and any Exclusive Use Common Area appurtenant thereto be performed by a qualified professional in a timely manner. In addition, each Owner shall perform, without limitation, at least the minimum cleaning, maintenance and repair described on Exhibit C attached hereto.

**(a)** Each Unit Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items within such Unit Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke and carbon monoxide detectors, and any and all other appliances and kitchen devices of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit, including condensers and compressors (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, countertops, light bulbs; electrical panels and breakers, electrical wiring and other fixtures of any nature whatsoever; "built-in" features; and decorative features, any furniture and furnishings; plumbing pipes,

sanitary sewer Lines, drains, flues, heating ducts, telephones lines and equipment, toilets, sinks, shower enclosures and tubs, bathroom fittings such as towel rails, cable, phone and data lines, television Lines or equipment or other utility equipment and Lines which serve only that Unit Owner's Unit, no matter where the equipment is located; provided, that any such equipment located in the Common Area shall be maintained and repaired by the Association, or a licensed contractor approved by the Association and such maintenance, repair and/or replacement costs shall be paid by the Unit Owner of the Unit. In furtherance of the foregoing, each Unit Owner shall bear the cost of any clearing of blockage and damage repair to any toilet or lateral sanitary sewer line which serves only that Unit Owner's Unit. If the Unit Owner fails to pay the cost for such maintenance or repairs, the Association may levy an Individual Special Assessment against the Unit Owner's Unit to reimburse the Association for costs incurred. If the utility equipment or Lines serve two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment or Lines, 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.

**(b)** Notwithstanding that the Association shall maintain and repair the structural components of the Common Area associated with the Exclusive Use Common Areas decks or terraces, including, without limitation, the floor sealing and any associated waterproofing, sealant or elastomeric membranes below the surface of the flooring (as further described in Section 5.1 above), each Owner of a Unit to which any Exclusive Use Common Area deck or terrace is appurtenant shall (i) maintain and repair any built-up or raised decking, tile, brick or paver covering such deck, terrace or balcony, and any waterproofing treatment to the surface of such built-up or raised decking, tile, brick or paver, (ii) be responsible for routine maintenance and cleaning of any such deck or terrace, (iii) keep any such deck or terrace in good condition, clean and neat at all times, (iv) maintain any landscaping located on any such deck or terrace, and (v) be responsible for the maintenance and repair of any personal improvements to any such deck or terrace. Any maintenance, repair or improvement to any deck or terrace appurtenant to an Owner's Unit by such Owner shall be subject to applicable architectural rules and regulations as described in this Declaration. No Owner or Occupant of a Unit shall install, modify, alter, construct, remove or add any built-up flooring, decking, tile or other floor covering to any deck or terrace area without the prior written approval of the Board. Reference is made to the architectural control provisions in Section 7.27 of this Declaration.

**(c)** Each Unit Owner shall keep any drain(s) located on that Owner's Exclusive Use Common Area deck or terrace area clear, free of obstruction and in good working condition, and shall promptly report any problems with functioning of the drain to the Association.

**(d)** Each Unit Owner shall have the water hose(s) for any clothes washer inspected annually, and shall provide proof of such inspection to the Association upon request.

**(e)** Subject to the Association Rules and any architectural or other guidelines adopted by the Board, each Unit Owner shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to that Unit Owner's Unit and any Exclusive Use Common Area appurtenant thereto. The repair or replacement of any of the Condominium Building and any portion of the Common Area shall be of equal or greater grade or quality than the original installation. All maintenance and repair of the Condominium Building and any portion of the Common Area shall be performed by qualified professionals.

**(f)** Each Unit Owner shall take no action or allow inaction that causes degradation, damage or puncturing to any flooring or surface area of any Exclusive Use Common Area deck or terrace area appurtenant to that Owner's Unit, and each owner shall be responsible for any such degradation, damage or puncturing caused by such Owner's action or inaction. It is the duty of each Owner to notify

the Association promptly and without delay in the event such Owner discovers any damage, crack, leak, hole, degradation or other problem with the functioning of any portion of any deck or terrace area appurtenant to that Owner's Unit.

**(g)** Each Unit Owner shall maintain, repair and replace any smoke or carbon monoxide detectors located in that Owner's Unit. The Association shall maintain any fire sprinkler heads and related systems located in any Unit; provided that each Owner and Occupant shall immediately notify the Association of any problems with any automatic sprinkler heads located the Owner's Unit. It is Owner's responsibility to keep any such fire and life safety systems in the Owner's Unit clear of any obstructions.

**(h)** Subject to the Association Rules and Section 7.27 below, each Unit Owner shall have the exclusive right to paint, plaster, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors and doors bounding that Owner's Unit in a manner which does not intrude on or into the Common Area, which does not involve mechanical or structural elements of the Common Area, which does not transmit unreasonable noise or vibration through the Common Area (including without limitation, floors, ceilings and walls), as reasonably determined by the Board and which is not visually offensive to persons of ordinary sensibilities viewing from the Common Area or public areas as reasonably determined by the Board. Any modification of flooring within a Unit shall be subject to Section 7.27 below. In the event an Owner fails to maintain the interior of his Unit or fails to perform routine cleaning and maintenance of any Exclusive Use Common Area to which he has an easement or assignment in a manner which the Board deems necessary or appropriate to preserve the appearance and value of the Development, the Board may notify the Owner of the work required and request that the Owner complete such work within sixty (60) days from the date such notice was given to the Owner. In the event said Owner fails to complete such work within said period, the Board may, after written notice to the Owner and an opportunity for a hearing before the Board, cause such work to be done and the cost of such work shall be a monetary penalty enforceable according to the provisions of the Bylaws and this Declaration and shall be payable to the Association by such Owner.

**(i)** **Maintenance Duties of the Commercial Unit Owner.** Without limiting the generality of the inspection, maintenance, repair and replacement obligations applicable to the Commercial Unit Owners described elsewhere in this Declaration, the Commercial Unit Owner shall be responsible for inspecting, maintaining, repairing and replacing (i) the interior of the Commercial Unit, (ii) utilities, Lines and equipment and other improvements exclusively servicing the Commercial Unit, and (iii) the windows and glass doors enclosing the Commercial Unit (except, in the event of a casualty, to the extent that such repair or replacement is covered by casualty insurance required by this Declaration to be maintained by the Association), and (v) any Exclusive Use Common Area appurtenant to the Commercial Unit. The Commercial Unit Owner shall provide reasonable evidence to the Association that activities described in this subsection have been performed if requested by the Association. If the Commercial Unit Owner fails to perform such activities as required by this subsection, then upon reasonable advance written notice to the Commercial Unit Owner and Commercial Tenants, the Association shall have the right to perform any such activities described in this subsection, and charge all costs and expenses related thereto to the Commercial Unit Owner. Any such utilities, Lines, equipment and improvements that service the Commercial Unit but are located in the Common Area shall, at the discretion of the Association, be maintained, repaired and replaced by the Association, or be maintained, repaired and replaced by a licensed contractor approved by the Association, but in either case all such maintenance, repair and/or replacement costs shall be paid by the Owner of the Commercial Unit. If the Commercial Unit Owner fails to pay the cost for such maintenance, repair or replacement, the Association may levy an Individual Special Assessment against the Commercial Unit to reimburse the Association for costs incurred. If utilities, Lines, equipment or improvements serve two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment or Lines, 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.

**(1)** Without limiting the foregoing, to the extent the items listed below serve the Commercial Unit exclusively, the maintenance, repair and cleaning of the following items and/or portions of the Commercial Unit shall be the sole responsibility of the Commercial Unit Owner served thereby at such Owner's sole cost and expense: (i) interior walls, (ii) storefront doors and related hardware and locks, (iii) window casements, (iv) glazing, (v) plumbing, (vi) pipes, (vii) electrical services and equipment, (viii) floors, (ix) heating, ventilating and air conditioning (HVAC) systems and related equipment, (x) ancillary fire suppression systems and equipment, (xi) pest control services, (xi) grease collections systems and equipment (if any), (xii) kitchen exhaust fans and equipment (xiii) any trash area dedicated for the exclusive use of the Commercial Unit (if any).

**(2)** Each Commercial Unit Owner shall each keep the sidewalks directly adjacent to and in front of such Owner's Commercial Unit clean and neat; provided that as required by local ordinance, and subject to the provisions of Section 5.1 above, the Association shall be responsible for the structural repair of the sidewalks in front of the Condominium Building. If a Commercial Unit Owner fails to keep the sidewalk in front of its Commercial Unit clean and neat to the reasonable satisfaction of the Board, then the Board shall have the right to cause the sidewalk in front of any such Commercial Unit to be cleaned, and charge to the subject Commercial Unit Owner(s) the costs for such cleaning.

**Section 5.3 Maintenance of Landscaping.** The Association shall maintain all of the landscaping within the Development (other than landscaping located in an Exclusive Use Common Area deck appurtenant to a Unit Owner's Unit, which shall be the responsibility of such Unit Owner), if any, in general accordance with the landscaping plans as originally installed unless climatic conditions make such maintenance impracticable or unless the Board consents to a change in the plan for the landscaping.

**Section 5.4 Access at Reasonable Hours.** For the purpose of performing the inspection, maintenance, repair and/or replacement authorized by this Article 5, the Association's agent(s), employee(s) or hired service providers shall have the right, after reasonable written notice to the Owner (received by Owner pursuant to Section 11.13 not less than forty-eight (48) hours prior to entry, unless an emergency exists, in which case no written notice need be given), to enter any Unit during reasonable hours with as little inconvenience to the Owner as is practicable.

**Section 5.5 Basement and Garage Walls.** The basement and garage areas are constructed at sub-grade level. Due to the elevation of the water table and water migration during periods of rainfall or an increase in the water table, portions of the Property at the sub-grade level can be expected to respond to the moisture differently than the portions of the Property which are above grade. The Development is being constructed with the understanding and anticipation that due to the high water table in the area, water migration and deep basement configuration there will be more wall moisture than in a structure above the water table. Surface wetness and pooling of water in the garage and basement areas is expected in the construction of this type of assembly, and will not compromise the structure. Efflorescence and wetness may form on the walls of sub-grade levels. Pooling of water may occur and form puddles. It is also possible for the water pooling on the flooring decks to run to small cracks that naturally occur in the flooring deck slabs. Water may also come into the garage from access ramps and vehicles. All such water in the garage could damage vehicles that are being dripped on. The Association should regularly inspect, maintain and repair any such pooling or leakage of water. The materials have been chosen to accommodate these conditions. The presence of moisture or water *per se* is not equivalent to a leak. The surface moisture and pooling of water in the garage and basement areas, and some efflorescence, are expected, and should not be considered as evidence of a defect. Atmospheric conditions coupled with

below-grade construction will typically result in some moisture and presence of water, and this should be considered as normal. The Association should conduct routine, periodic inspections of the walls of the garage at the sub-grade levels and monitor the effect of the surface moisture and any pooling or puddles of water. Aside from this minor wall moisture, pools or puddles, any leaks discovered by the Association will need to be addressed promptly to assure that any property damage is repaired, and the structure is not impaired. The Association shall not be liable for any damage to any vehicle or personal property of any Owner, Occupant or Invitee of the Development caused by or related to water intrusion or moisture in the basement or garage of the Building.

**Section 5.6** **Storm Drains/Stormwater.** The Development complies with the City of San Francisco's Storm Water Management Ordinance to incorporate Low Impact Development (LID) measures to remove pollutants from stormwater runoff, reduce stormwater volume, attenuate stormwater peak flow, and improve stormwater quality from the Development prior to discharge to the City's combined storm and sewer system. The system designed for the Development utilizes some of the planters as filters for a portion of the rainwater captured on the Development's roof areas. There is also a sand/oil interceptor on the Property. The Master Association will be responsible for the following maintenance (as well as any other maintenance obligations described in the Stormwater Plan):

**(1)** Annual inspection of the inlets, outlets and overflow structures for proper drainage of the planters.

**(2)** Routine cleaning of debris buildup within the planters.

**(3)** Periodic replacement of the soil as necessary for filtration.

**(4)** Routine vegetation maintenance.

**(5)** Regularly water during the first three months as vegetation is established.

**(6)** Add mulch to bare areas semi-annually at the beginning and end of each rainy season.

**(7)** Annual re-grading of soil surface if erosion or scouring has occurred.

A Stormwater Control Plan detailing the maintenance requirements and identifying the planters will be provided by the Declarant to the Master Association.

**Section 5.7** **Specific Issues and Restrictions For Maintenance and Repair**. In addition to other restrictions or requirements described in this Declaration or in any maintenance or owner's manual provided to the Association or any Unit Owners, the following restrictions and limitations shall apply to maintenance, repair, installation, alteration and improvement activities in the Units and Common Area:

**(a)** **Refrigerant Lines in vertical shafts and ceilings**. The Building comes equipped with refrigerant Lines located in vertical shafts and above ceilings in the Units and Common Area. Such Lines serve multiple Units on multiple floors, and it is critical that such Lines are not damaged or disturbed. Before performing any maintenance, repair, installation, alteration and improvement activities in the Units and Common Area, the building engineer shall be contacted and the proposed work shall be described, so that the building engineer may determine whether the proposed work may affect any such refrigerant Lines. No such work shall be performed until the building engineer determines that such Lines will not be damaged or disturbed. The Association or Unit Owner shall comply with any requirements imposed by the building engineer in connection therewith.

**(b) Lighted Mirrors on Bathrooms**. Certain bathrooms may have a lighted mirror fixture installed. The mirrors must be removed in order to change the lights. For safety purposes, Owners and Occupants shall contact the Association property manager or Building maintenance personnel to change the lights or provide other service to the lighted mirror fixtures.

**(c) Ceiling Junction Boxes**. Some Unit ceilings may have Cast-In-Place junction boxes that were not designed, intended, or installed for use with ceiling fans or light fixtures over fifty (50) pounds. Mounting light fixtures over thirty-five (35) pounds or ceiling fans on these junction boxes may result in the fixture or fan falling and causing injury.

## ARTICLE 6
## UTILITIES AND EASEMENTS

**Section 6.1 Unit Owners' Rights and Duties.** The rights and duties of the Unit Owners with respect to sanitary sewer, water, cable or satellite television, electricity, gas, internet and telephone Lines and facilities and heating and air-conditioning facilities shall be as follows:

**(a)** Whenever sanitary sewer, water, plumbing, cable or satellite television, telephone, internet, distributed antenna system (DAS), electricity, gas, HVAC system, heating or air-conditioning conduits, ducts or flues are installed within the Development, which connections, or any portion thereof, lie in or about or adjacent to Units owned by a Person other than the Owner of a Unit served by said connections, or lie in or about Condominium Building(s) other than the Condominium Building served by said connections, the Master Association and Sub Associations shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or Condominium Buildings or to have the appropriate utility companies or service providers enter the Units or Condominium Buildings after reasonable notice and during reasonable hours (except, in the event of an emergency in which case entry may occur at any time without notice), in or about which said connections, or any portion thereof, lie to maintain, repair, replace and generally operate, monitor and maintain said connections as and when necessary.

**(1)** In furtherance of the foregoing, certain floors in the building are plumbing distribution floors. The Units in such floors may have plumbing access panels in bathroom ceilings. Such panels provide access to plumbing valves and Lines that serve multiple Units. The Association shall have the right to enter any Unit to access such plumbing access panels and perform any necessary work.

**(2)** In furtherance of the foregoing, certain Units may have access panels and closets for refrigerant risers and related Lines. Such panels and closets provide access to refrigerant risers and related Lines that serve multiple Units. The Association shall have the right to enter any Unit to access such refrigerant riser access closets and panels and perform any necessary work.

**(b)** Whenever sanitary sewer, water, cable television, internet, telephone, electricity, gas, heating or air-conditioning conduits, HVAC system, ducts or flues are installed within the Development which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to full use and enjoyment of such portions of said connections as service his or her Unit. The Owner and Occupants of a Unit shall not take any action that would in any manner interfere with the operation of the utility lines or equipment serving any other Unit.

**(c)** Whenever internal and external telephone or telecommunication wiring for a Unit, or any portion thereof, lies in or about the Development, the Unit Owner of the Unit served by such wiring shall be entitled to reasonable access to the Development for the purpose of maintaining such

wiring. Said access shall be subject to the consent of the Master Association Board whose consent shall not be unreasonably withheld and which may include the Master Association's approval of telephone wiring upon the exterior of the Common Area and other conditions as the Master Association Board determines reasonable.

**(d)** In the event of a dispute between Unit Owners with respect to the repair or rebuilding of the above-described connections, or with respect to the sharing of the cost thereof, then, upon request of one of such Unit Owners addressed to the Master Association, the matter shall be submitted to the Master Association Board who shall hold a hearing and decide the dispute and the decision of the Master Association Board shall be final and conclusive upon the parties.

**(e)** Any air heating, air conditioning, water heating equipment, HVAC unit, lighting fixtures and outlets thereof, including outside air filter system and filters, which are a part of a discrete and complete system serving only one Unit shall be maintained and repaired by the Owner of the Unit served by said equipment; provided that an Owner shall not access or open up any Common Area wall, roof or other portion of the Common Area, and shall not perform any work on any common utility Lines or systems without prior written approval by the Master Association. Notwithstanding the foregoing, while the air heating, ventilation and air conditioning (HVAC) unit, including outside air filter system and filters, serving a particular Unit shall be maintained and repaired by the Owner of such Unit, the maintenance and repair of any Lines, piping or conduits for such HVAC unit that are located within the Common Area walls, ceilings or floors, or other portions of the Common Area, regardless of the number of Units served, shall be performed by the Master Association, or a licensed contractor approved by the Association; provided, however, such maintenance, repair and/or replacement costs shall be paid by the Owner of the Unit served by such air heating, ventilation and air conditioning (HVAC) system and equipment. Each Unit Owner shall be responsible to replace the outside air filter serving such Owner's Unit.

**Section 6.2** **Master Association's Duties.** The Master Association shall maintain all utility connections, water systems, sanitary sewers, cable or satellite television, internet, telephone, drainage and storm drainage facilities located in the Common Area, except for those installations maintained by utility companies whether public, private or municipal, or other service provider. All drainage, sanitary sewer and storm drainage facilities shall be regularly inspected and, if necessary, cleaned or otherwise maintained. Except for any charges for certain limited utilities that are to be paid by a Sub Association, the Master Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Units. Reference is made to Section 5.1 of this Declaration for further detail concerning Master Association and Sub Association maintenance obligations.

**Section 6.3** **Easements for Utilities and Maintenance; Commercial Unit Improvements.** Easements over and under the Development for (a) the installation, operation, repair and maintenance of electric, telephone, water, gas and sanitary sewer Lines and facilities, (b) heating and air-conditioning Lines and facilities, (c) cable or master television antenna Lines and facilities, (d) storm drains and drainage Lines and facilities, and (e) walkways, pedestrian and vehicle accessways and landscaping, as such easements are recorded or are needed to service the Development or any portion thereof, are hereby reserved by Declarant and Declarant's successors and assigns together with the right to grant and transfer the same.

**(a)** Subject to architectural review and approval by the Master Association as described in Section 7.27(o) and other conditions and restrictions as stated herein, the Commercial Unit Owner shall have the right to install, maintain, repair and replace, and shall have easement(s) for, any utilities and related equipment or Lines in the Common Area as are reasonably necessary to conduct the businesses contained in the Commercial Unit, which right shall include the right to install, maintain,

repair and replace utilities facilities, a central radio and/or television antenna system, cable television system, satellite dish or other central television reception system on the roof of the Condominium Building. Such right shall include without limitation the right of access to and use of the Common Area as needed to perform such installation, maintenance, repair and replacement, and the right to cause the walls, ceilings, floors of the Condominium Building to be opened up for the purpose of such installation(s) and any related maintenance, repair and replacement, subject to the reasonable approval by the Board. No such utilities, Lines, or equipment shall be installed in any portion of the Development without first obtaining all required permits and approvals from the San Francisco Planning Department, Department of Building Inspection and all other applicable agencies. Notwithstanding the foregoing, any such utilities, Lines, or equipment shall be installed in such location(s) within the Condominium Building that will cause reasonably minimal intrusion to the Residential Unit Owners and Residential portions of the Condominium Building, as determined by the Board in its reasonable discretion. The Commercial Unit Owner shall be responsible for all work in installing, operating, maintaining and replacing any utility, Lines or equipment described in this Section serving the Commercial Unit exclusively, including, without limitation, safety, clean-up, temporary facilities, repair and restoration of finishes. The Commercial Unit Owner shall provide at least thirty (30) days prior notice to the Master Association before commencing any such work within the Common Area.

**Section 6.4** **Easements for Ingress, Egress and Support.** Unless designated Exclusive Use Common Area, which use is restricted as described on the Condominium Plan or this Declaration for the benefit of less than all Units, there is appurtenant to each Unit nonexclusive rights of ingress, egress and support, if necessary, through, on, upon or over the Common Area, subject to the Master Association Rules.

**Section 6.5** **Encroachment Easements.** In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or Condominium Plan. As such, each Unit and Exclusive Use Common Area within the Development is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, movement, settlement or shifting of any building or any similar cause. Each Unit, or portion thereof, and the Common Area as the dominant tenement has an easement over any other Unit, or portion thereof, or the Common Area, as applicable, as the servient tenement for the purposes of accommodating any such encroachments described in the previous sentence. In addition, each Unit is subject to such encroachments by the Common Area as may now exist or may hereafter be created by any of the causes referred to in this Section. There shall be valid easements for the existence and maintenance of said encroachments as long as they shall exist and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional act of willful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed and is then repaired or rebuilt in substantially the same manner as originally constructed, the Owners of each Condominium agree that minor encroachments over adjoining Units or the Common Area due to such reconstruction shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units where HVAC equipment, water/utility shut-off valves or other utility facilities are installed, an easement over the Common Area into which said equipment encroaches shall exist for the purpose of maintenance, replacement and repair of said equipment.

**Section 6.6** **Right to Grant Easements and Licenses.** In addition to the designated Exclusive Use Common Areas shown on the Condominium Plan, Declarant reserves the right to grant easements or licenses over, under, across or through the Common Area for the use by a Unit Owner, any third party, an owner or owners of contiguous property, the general public or government agency. Any such easement or license may be conveyed or established by the Declarant before the last close of escrow

for sale of a Unit in the Property. The purpose of the easement or license, the portion of the Common Area affected, the Unit to which the easement is appurtenant (if applicable), and any restrictions on use of the easement area shall be identified in a written document executed the grantor and grantee, and with respect to an easement, recorded in the Official Records. No such grant of easement or license shall give rise to any right to compensation or adjustment of a sales price for a Unit by refund or otherwise.

**Section 6.7 Right of Entry.**

**(a) Association.** The Master Association and Sub Associations shall have the right to enter each of their Member's Condominiums and Exclusive Use Common Area appurtenant thereto to inspect the Development, and may take whatever corrective action it determines to be necessary or proper, consistent with this Declaration and the Governing Documents. Each of the Master Association and Sub Associations shall have the right to enter any of its Member's Unit in order to perform any maintenance, repair and/or replacement obligations of such Association pursuant to this Declaration, which right shall include, without limitation, an easement over any corridor or demising walls that may be located within the airspace or boundaries of a Unit. Such right of entry to any Unit in favor of the Master Association and Sub Association shall include, without limitation, the right to access, inspect, maintain, repair and replace any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof that may be located within the airspace or boundaries of a Unit but serve two or more Units or the Common Area. Entry onto any Condominium Unit or Exclusive Use Common Area under this subsection may be made after at least forty-eight (48) hours advance written notice to the Owner of the Unit except for emergency situations, which shall not require written notice. Any damage to the Condominium or any Exclusive Use Common Area caused by entry under this subsection shall be repaired by the Master Association or Sub Association who entered or caused entry in such Condominium or Exclusive Use Common Area.

**(b) Declarant.** Declarant hereby reserves for itself, and for its agents, employees, contractors and/or subcontractors (collectively, "Declarant Parties") the right to enter any Unit, Exclusive Use Common Area and the Common Area (i) to inspect any Unit, Exclusive Use Common Area and the Common Area, and all improvements thereon, (ii) to complete and/or maintain or repair any improvements within any Condominium Unit, Exclusive Use Common Area and/or the Development Declarant determines necessary or proper, in its sole discretion, (iii) to perform any warranty work Declarant determines necessary or proper in its sole discretion, (iv) to comply with requirements for the recordation of the Map or Condominium Plan or the grading or construction of the Development, and (v) to comply with requirements of applicable governmental agencies. Declarant shall provide at least forty-eight (48) hours notice to an Owner prior to entry into the Owner's Unit or Exclusive Use Common Area under this subsection except for emergency situations, which shall not require prior notice, but shall require notice to the Owner within seven (7) days after such entry was made. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After the inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations for action Declarant Parties believe is appropriate for the Association to take to maintain improvements for which the Association is responsible. Any physical damage caused by entry under this subsection shall be repaired by the Declarant or the Declarant Party that caused the damage. This right of entry includes, but is not limited to, entering into one Unit or Exclusive Use Common Area to perform work which benefits another Unit(s) or Exclusive Use Common Area. Unless otherwise specified in the initial grant deed of the Condominium Unit from Declarant, this right of entry shall automatically expire eleven (11) years from the last close of escrow for the sale of a Condominium in the Development.

**Section 6.8** **Public Easements**. There shall be easements over portions of the Property and Development in favor of the general public or government agency as shown and described on the Map, the Condominium Plan, as required by the City or other state or local governmental agencies, and as may be declared, reserved or agreed upon by Declarant as provided in this Declaration or other document.

**Section 6.9** **Alteration of Commercial Unit Walls, Ceilings and/or Floors; Commercial Unit Owners' Rights.** Subject to Sections 2.14 and 7.27(o) of this Declaration and in compliance with any architectural guidelines applicable to the Commercial Units as may be reasonably adopted by the Board in compliance with Section 7.27(o), the Commercial Unit Owner shall be permitted to move, remove and/or replace floors, ceilings and demising walls in order to modify the Commercial Units or divide a Commercial Unit into two or more individual Commercial Tenant spaces, or join two or more Commercial Units into any number of individual Commercial Tenant spaces. Such alterations may include, without limitation (i) the modification or relocation of plumbing, electrical, ventilation systems, HVAC systems, telecommunication systems, outlets, Lines or other utilities and related facilities serving the subject Commercial Unit(s), (ii) modification, movement, alteration, relocation, removal or replacement any interior demising walls or entry doors in the subject Commercial Unit(s), and access to and use of the ceilings and floors of the subject Commercial Unit(s). Notwithstanding anything to the contrary in this Declaration, in no event may any load bearing wall or beam located within a Commercial Unit or Common Area be altered or modified in any way without the prior written approval of the Board.

**Section 6.10** **Commercial Unit Owners' Right to Grant Easements**. The Commercial Unit Owners shall have the right to grant easements or licenses over and across Commercial Unit(s) in order to provide access to, use of, and ingress and egress over and across, a Commercial Unit to another Commercial Unit or the Common Area by another Commercial Unit Owner, or occupant or user of a Commercial Unit, as may be reasonably necessary or convenient in connection with the operation of a commercial use in a Commercial Unit and facilities related thereto.

**Section 6.11** **Limitations on Commercial Unit(s) Easements for Access to and Use of Residential Facilities**. Notwithstanding anything to the contrary in this Declaration, and notwithstanding any easements in favor of the Commercial Unit Owners and Commercial Tenants, the Board shall have the right to restrict the Owners, Occupants, Commercial Tenants and Invitees of the Commercial Units from accessing and using the Residential Facilities; provided, however, that there shall be for the benefit of the Owners, Occupants, Commercial Tenants and Invitees of the Commercial Units a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over those portions of the Common Area as may be reasonably necessary for (a) ingress and egress to the Master Association management and personnel office(s) (if any), (b) maintenance, repair and replacement of the Commercial Units as set forth herein, (c) ingress and egress to the loading docks and related areas and facilities, (the use of which are subject to Section 7.2(a)(11), (d) ingress and egress to the garbage, recycling and compost facilities designated for use by the Commercial Owners (if any), (e) emergency ingress and egress, (f) the purposes described in Sections 2.14, 2.15, 6.3(a), 6.9, 6.10, 6.11 and 7.2, and (f) other purposes as may be determined by the Board. Notwithstanding the foregoing, Declarant or the Master Association shall have the right to enter into an agreement(s) or other contractual arrangement(s) with the Commercial Unit Owner(s) or Commercial Tenant(s) or otherwise establish easements, licenses or other rights to access and use portions of the Common Area in connection with the promotion and operation of the Commercial Unit(s) and businesses therein. Such right of Declarant shall include, without limitation, the right to create and record a separate declaration providing, among other things, access and use rights, licenses, and easements in favor of the Commercial Unit(s) concerning use and operation of the Commercial Unit(s) and related Common Area. This Declaration, the Master Association, Sub Associations and Owners shall be subject to any such agreement or other contractual arrangement, declaration, easements, licenses or other rights established by Declarant concerning the Commercial Unit(s).

**Section 6.12** **Communications Facilities**. Declarant hereby reserves for its benefit and for the benefit of Declarant Parties, and grants to the Master Association on a nonexclusive basis, the right to install, maintain, repair and replace a satellite or other communications device on any roof of any building area in the Development, provided that such installation shall be in conformance with all applicable laws and regulations. So long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Development, Declarant shall have the sole right and authority to approve such installation, maintenance, repair and replacement of a satellite, antennae or other communications device(s).

**Section 6.13** **Window Washing Equipment**. Declarant hereby reserves and grants to the Master Association a non-exclusive easement over the roof(s) of all building areas in the Development and over certain Exclusive Use Common Area patio areas and deck areas, as reasonably necessary, for the maintenance, storage and operation of window washing and other equipment as may be reasonably necessary to wash windows within the Development, to perform the Master Association's inspection, maintenance and repair obligations under this Declaration, and to replace parts and pieces of the external wall and glass systems. Such easement rights include, without limitation, the right of the Master Association to access any portion of any (i) Condominium Building, (ii) Residential Unit(s), (iii) Commercial Unit(s), and (iv) Exclusive Use Common Area patio areas and deck areas, as may be reasonably necessary to use, operate, maintain, store, repair and replace such equipment. Each Owner is obligated to cooperate with the Master Association in connection with the Master Association's exercise of its rights hereunder. Each Owner and occupant of a Unit shall cooperate with the Master Association to provide access through the Unit in connection with access to and use of any such equipment and washing of the windows and maintenance of building exteriors which are the responsibility of the Master Association.

**Section 6.14** **Easements and Rights in Favor of Declarant.**

(a) **Easements for Construction, Marketing; Inspection, Maintenance and Repair.** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, together with the right to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over, across and under, any portions of the Property as is reasonably necessary or desirable to: (1) undertake and complete the work of development, construction, sales, marketing, leasing, conveyance and/or inspection, maintenance, repair and replacement of any improvements on the Property, and (2) perform any warranty activities or rights to inspect, repair or replace granted to Declarant under this Declaration, the Title 7 Master Declaration, any other warranty or applicable laws or regulations; provided that such rights do not impose any obligation on Declarant to perform any inspection, maintenance, repair or replacement unless otherwise required by the Declaration. The rights described herein shall also include the right of Declarant to temporarily restrict access to certain areas of the Property in connection with such activities.

(b) **Easements for Signage** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, easements on, over, under, through and across the Common Area to install, maintain, repair and replace, identification, promotional, sales, marketing, leasing and other signage, banners, flags, and other advertising materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of the rights described in Section 11.4 of this Declaration.

(c) **Declarant's Easements to Exercise Rights.** Declarant hereby reserves to itself, with the right and power to grant the same, a non-exclusive easement over the Property to perform its duties and exercise its rights, powers and obligations under this Declaration, including, without limitation, the rights and powers described in Section 11.4.

**(d)** **Installation of Additional Improvements.** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, with the right and power to grant the same, the right to install and operate within the Common Area such landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, utility, internet, television and telecommunication facilities, infrastructure and other facilities and improvements, as may be deemed appropriate by Declarant and/or required by applicable laws or regulations or in connection with the issuance of any permits or approvals for the benefit of Declarant; provided that such right does not impose any obligation on Declarant to perform any such activities unless otherwise required by the Declaration. In addition, Declarant hereby reserves to itself a non-exclusive easement over, upon, under and across the Common Area for purposes of access to the Property as may be reasonably necessary in connection with such activities.

**Section 6.15** **Suspension of Rights to Use Residential Facilities.** All of the easements in favor of the Residential Unit Owners are subject to the right of Declarant and the Master Association, after notice and hearing, to temporarily suspend a Residential Unit Owner's rights as a Member (as well as the rights of a Tenant or Occupant of a Residential Unit Owner) to use the Residential Facilities pursuant to the terms of the Governing Documents.

## ARTICLE 7
## USE RESTRICTIONS

In addition to all of the conditions and covenants contained herein, the use of the Development and each Unit therein is subject to the following restrictions:

**Section 7.1** **Residential Units.** No Residential Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and guests, and no trade or business shall be conducted in any Residential Unit, except that Declarant, its successors or assigns, may use any Residential Unit or Units in the Development owned by Declarant for a model home, sales, leasing and marketing office, construction management office, Association office and/or customer service office until the last Condominium on any portion of the Property is sold and escrow closed by Declarant. A Residential Unit may be used as a residence with an included executive or professional office by the Owner or other occupant of the Unit, thereof, provided that (i) such use does not unreasonably interfere with the use by other Residential Unit Owners of their Residential Units, (ii) there is no signage visible from the exterior of the Unit, (iii) such use does not include regular and routine business visits from clients or customers, and (iv) such use is in compliance with local codes and ordinances.

**(a)** Residents shall be limited as follows: With the exception of infants and children, no more than two (2) persons per bedroom in any Residential Unit shall be permitted as permanent residents. A "permanent resident" means any person residing in a Residential Unit more than sixty (60) days out of any twelve (12) consecutive month period. One (1) person shall be allowed as a permanent resident in addition to the maximum number of permanent residents otherwise permitted in each Residential Unit. For purpose of this Section, studio Units shall be considered 1-bedroom Units.

**(b)** No health care facilities operating as a business or charity shall be permitted in the Residential Units.

**(c)** No Residential Unit or any portion of any Residential Unit in the Development shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "vacation rental," "travel club," "extended vacation," or other membership or time interval ownership arrangement. Short term rentals or leasing of a Residential Unit or room or space therein, or otherwise providing short term accommodation or lodging to third parties in a Residential Unit or room or space

therein, for a period of time less than that permitted by Section 7.7 below, shall not be permitted. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy or possess the Residential Unit or Units, or any portion of the Residential Units in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of less than one (1) year. Provided, this Section shall not be constructed to limit the personal use of any Residential Unit or any Portion thereof in the Development by any Owner or his social or familial guest.

**(d)** In addition to the above in this Section 7.1, occupancy and use of the Below Market Rate Units in the Development shall be subject to conditions and other requirements imposed by MOHCD or OCII.

**Section 7.2** **Commercial Units**. Except as provided in this Section 7.2, all restrictions of Article 7 shall apply to the Commercial Units. The provisions of Sections 7.1, 7.7, 7.9, 7.13, 7.15, 7.17, 7.18, 7.24, 7.26 and 7.27 (except 7.27(o)) shall not be restrictions on the use of the Commercial Units. The provisions of this Section 7.2 shall not be amended without the prior written consent of the Commercial Unit Owners.

**(a)** **Commercial Use**. The Commercial Units shall be occupied and used solely for commercial purposes by the Commercial Unit Owners and their Commercial Tenants. Except for restrictions identified in Section 7.2, the Commercial Unit Owners may use or lease the Commercial Units for any commercial uses permitted by the San Francisco Planning Code in the zoning district in which the Development is located. The Master Association and its Board, Sub Associations and their Boards, and Residential Unit Owners shall not have the right to restrict the use, operation or leasing of the Commercial Units or any individual commercial space located therein. There shall be no rule, restriction or limitation on the use of the Commercial Units or any individual commercial space located therein except as specifically provided in this Section 7.2 or otherwise provided in this Declaration. The Commercial Units and individual commercial spaces located therein shall be used in conformity with the San Francisco Planning Code and applicable San Francisco zoning ordinances. Any lease of all or a portion of a Commercial Unit or any individual commercial space located therein shall expressly provide that it is subject to the provisions of the Governing Documents. Without limiting the generality of the foregoing, the following shall apply to the Commercial Unit:

**(1)** The following uses shall not be permitted in any Commercial Unit: (i) nightclub, (ii) disco, (iii) bowling alley, (iv) billiard parlor, (v) amusement arcade, (vi) theater of any kind, (vii) adult book store, (viii) adult theatre, (ix) adult amusement facility, (x) any facility selling or displaying pornographic materials or having such displays, (xi) any facility for the sale of paraphernalia for use with illicit drugs, cannabis, or tobacco,(xii) blood bank, (xiii) health services offering overnight care, (xiv) drug rehabilitation center, (xv) massage parlor, (xvi) funeral home, (xvii) sleeping quarters or lodging, (xviii) assembly hall, (xix) off track betting establishment, (xx) bingo hall, (xxi) denominational places of worship, (xxii) cannabis dispensary or similar retail establishment, (xxiii) cannabis cultivation facilities, or (xxiv) cannabis clubs, collectives or smoking lounges.

**(2)** Subject to obtaining required government permits and approvals, an Owner of a Commercial Unit or Units shall be permitted to further divide the Commercial Unit(s) into separate commercial spaces for use by the Commercial Unit Owner and its individual tenant(s), and shall be permitted to combine any number of Commercial Unit(s) to create a larger commercial space(s). A separate commercial use and/or tenant may be operated in each individual Commercial Unit or individual commercial space. Use of any individual commercial space shall be subject to the terms and conditions of the lease between the Commercial Unit Owner and the respective commercial tenant.

**(3)** Restaurants, bakeries, coffee shops and/or cafés serving breakfast, lunch, dinner and/or alcoholic beverages in connection with a restaurant or café shall be permitted in any portion of any Commercial Unit in the Development, including any of the individual commercial spaces located therein. A grocery market that will feature restaurant stations, food bars, a deli, prepared food, bakery, full kitchen, groceries, café and coffee shall be permitted in any Commercial Units and any individual commercial spaces located therein.

**(4)** The Commercial Units and any individual commercial spaces located therein shall be permitted to stay open for business during the hours permitted by the applicable ordinances of the City and County of San Francisco, including opening as early in the morning, and remaining open for business as late at night, as permitted by the applicable ordinances of the City and County of San Francisco. In furtherance of the foregoing, and without limitation, any Commercial Unit and any individual commercial tenant space located therein shall be permitted to be open for business operations (including, without limitation, preparation, cooking, baking, delivery, loading and unloading, stocking, employee activities, cleaning, service, maintenance, and repair) at any time of the day or night, and shall be permitted to be open for business to customers, clients, guests and the public at least between the hours of 6:00 a.m. and 12:00 midnight daily.

**(5)** The Commercial Unit Owners and Commercial Tenants shall be permitted to use all portions of the sidewalk adjacent to and in front of a Commercial Unit for outdoor or patio seating and customer service from the hours of 6:00 a.m. through 10:00 p.m. seven days a week, subject to permits granted by the San Francisco government agencies, and shall be permitted to install and use outdoor heaters and lighting in all such areas during such hours.

**(6)** The Commercial Unit Owners and Commercial Tenants shall be permitted to keep the windows of a Commercial Unit open from the hours of 6:00 a.m. through 10:00 p.m., and on Friday and Saturday nights the windows may remain open until 11:00 p.m.

**(7)** Amplified or recorded music and television shall be permitted within the interior of any Commercial Unit and in any individual commercial space located therein; however, no outdoor speakers shall be allowed (except for special events with permission from the Board), and indoor speakers shall not be pointed towards the doors or windows such that music may be unreasonably heard from outside the Commercial Unit.

**(8)** In order to reduce noise levels in connection with the Commercial Units and the individual commercial spaces therein, the Owners of the Commercial Units and the tenants of the individual commercial spaces shall take the following precautions:

**(i)** Exhaust fans shall generally be turned off after the close of business once any clean up and/or maintenance or repair activities are completed.

**(ii)** Reasonable care shall be taken to reduce noise when removing trash, recyclables and related items from a Commercial Unit and individual commercial spaces to and from the trash areas of the Development to the street or loading dock for pick up.

**(iii)** Self-closing doors located in commercial portions of the Building shall be equipped with devices to prevent doors from slamming shut and causing excessive noise.

**(9)** Any alarm installed in a Commercial Unit shall be the type of alarm which is monitored by a certified alarm monitoring company.

**(10)** Notwithstanding anything to the contrary in this Declaration, if a Commercial Unit Owner installs an Automated Teller Machine (ATM) in one of the Commercial Units, including, without limitation, an ATM installed in the exterior wall of a Commercial Unit for use by the general public from the street, then such ATM shall be permitted to remain open for business twenty-four (24) hours a day, seven (7) days a week.

**(11)** Deliveries to the Commercial Units and/or individual commercial spaces by use of the loading dock or from the street and sidewalk shall be permitted twenty-four (24) hours a day, seven (7) days a week. Delivery, loading, unloading and staging activities shall be permitted twenty-four (24) hours a day, seven (7) days a week.

**(12)** Maintenance, repair, replacement, service and cleaning work and related activities shall be permitted in the Commercial Units or individual commercial spaces therein twenty-four (24) hours a day, seven (7) days a week.

**(b) Commercial Unit Advertising; Signage; Lighting**. The Commercial Unit Owners shall have the right to install reasonable signage, window displays, lighting, awnings, horizontal sign extensions and window appliqués on the exterior of the Development, subject to reasonable restriction and any guidelines imposed by Declarant or adopted by the Board after consultation with the Owner of the affected Commercial Unit. The Master Association and its Board, the Sub Associations and their Boards, and Residential Unit Owners shall not unreasonably restrict signage, window displays, lighting, awnings, horizontal sign extensions and window appliqués by a Commercial Unit or a Commercial Tenant. Notwithstanding the above, no Commercial Unit Owner or Commercial Tenant shall employ an advertising medium or signage which can be unreasonably experienced from within a Residential Unit, including, without limitation, flashing lights, searchlights, blinking lights, loudspeakers, phonographs, radios or television. Before any signage and/or other advertising medium(s) may be erected, installed or employed by a Commercial Unit Owner or Commercial Tenant all permits and/or other approvals required by City and County of San Francisco agencies shall first be obtained.

**(c) Lease of Commercial Units; Compliance of Lessees**. Any lease agreement shall be in writing and shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with the Governing Documents shall be a default under the terms of the lease agreement. All Commercial Unit Owners that lease a Commercial Unit shall provide the name(s) and contact information for their tenants to the Master Association. A Commercial Unit Owner shall be responsible for the compliance with the provisions of the Governing Documents by the Commercial Unit Owner's lessees, customers, guests and Invitees, as well as its lessee's customers, guests and Invitees. The Commercial Unit Owners and each of the Commercial Unit Owner's lessees shall maintain a policy or policies of public liability insurance and shall demonstrate proof of such insurance to the Board upon request.

**(d) Hazardous Materials**. The Commercial Unit Owners and its lessees shall not use or keep in any portion of a Commercial Unit, commercial storage area or the Common Area any kerosene, gasoline, solvents, cleaning materials, harmful chemicals, caustic materials or inflammable or combustible fluid or material or other hazardous materials, other than those required to operate the business for which the Unit is used or for normal cleaning work. Any such hazardous material(s) kept in a Commercial Unit or commercial storage area shall be stored and used in a safe manner and in strict compliance with product guidelines and in compliance with any applicable governmental rules or regulations.

**(e) Venting for Restaurant Use**. Any fuel, gas or other substances used in the operation of a restaurant or café for the preparation of food and beverages must be vented through a

venting system approved by Declarant for so long as Declarant owns any Units in the Development, and thereafter by the Architectural Control Committee. All required governmental permits must be obtained, and shared with Declarant or Architectural Control Committee as applicable, for such venting. The Master Association and its Board, the Sub Associations and their Boards, and the Residential Unit Owners shall not restrict use of any venting system (or its reasonable replacement) installed by Declarant or installed with Declarant's approval.

**(f) Grease Interceptors.** Except as installed by Declarant or installed with Declarant's approval, no Owner may install a grease interceptor within the Common Area without prior approval by the Architectural Control Committee. Subject to the Commercial Architectural Guidelines, a Commercial Unit Owner may install a grease interceptor within the interior of the Commercial Unit, provided that such Commercial Unit Owner has obtained the approval of Declarant so long as Declarant owns any Unit in the Development, and thereafter by the Architectural Control Committee. All required governmental permits must be obtained, and shared with Declarant or Architectural Control Committee as applicable, for such grease interceptor. Declarant or Architectural Control Committee, as applicable, shall have the ability to inspect the Grease Interceptor at their request and shall be sent maintenance updates as they occur. The Master Association and its Board, the Sub Associations and their Boards, and the Residential Unit Owners shall not restrict use of any grease interceptor (or its reasonable replacement) installed by Declarant or installed with Declarant's approval.

**Section 7.3 Nuisance.** No nuisance, use or practice is permitted which is detrimental to the health, safety and welfare of the residents or interferes with their peaceful possession or proper use of their Units. No use is allowed which creates conditions that are unreasonably hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise or which unreasonably increases the rates of insurance for the Development, causes an insurance policy to be canceled, causes a refusal to renew an insurance policy or impairs the structural integrity of any building. To the extent storage of materials is permitted pursuant to the Governing Documents, such storage must be in accordance with building, fire, health and safety requirements as set forth by governmental authorities and insurance carriers. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance or is unreasonable pursuant to this subsection, subject to the terms of this Declaration. Notwithstanding the foregoing, any commercial use or operation permitted under Section 7.2 and in compliance with applicable ordinances of the City and County of San Francisco shall not be considered a nuisance, noxious or offensive. Any provisions of this Section 7.3 that affect the rights of a Commercial Unit Owner or any Commercial Tenant sball not be amended without the prior written consent of any affected Commercial Unit Owner.

**Section 7.4 Vehicle Parking and Operation Restrictions.**

**(a)** Parking and operation of vehicles in the Development shall be in compliance with this Section 7.4. All parking and operation of vehicles shall be subject to the Rules of the Master Association. Subject to the foregoing and the terms and conditions of a parking license agreement between Declarant or the Master Association and an Owner or authorized occupant, an Owner or authorized occupant of a Unit which has been assigned or licensed a right to have a vehicle parked in the garage of the Development by the valet parking service operator shall be permitted have one (1) authorized and licensed passenger automobile, sports utility vehicle, motorcycle, truck with carrying capacity of ½ ton or less, or van with seating capacity of eight (8) persons or less parked in the garage of the Development for each such parking assignment or license. No commercial vehicle, trailer, camper, mobile home, recreational vehicle, truck with carrying capacity of greater than ½ ton, van with seating capacity in excess of eight (8) persons, boat, inoperable vehicle or any vehicle too large to fit within a single parking space shall be parked or kept within the Development, except as may be permitted by the Master Association Rules. Maximum height limits for vehicles permitted in the garage may be

established by Declarant or the Master Association Rules. The Master Association shall have the authority to impose additional charges for the parking of any large vehicles.

**(b)** Each Owner and Occupant that obtains a parking license providing the right to have a vehicle parked in the Development shall be solely responsible for ensuring that such Owner's or Occupant's vehicle is not too large to be parked in the Development, and if any additional fees may apply to the parking of such vehicle. The Declarant and the Master Association shall have no liability whatsoever to any Owner or Occupant if such person's vehicle is too large to be parked in the Development.

**(c)** No vehicle shall be operated upon the Development which emits extraordinary and offensive levels of exhaust pollution or noise, as such levels may be determined by the Board. No Owner shall allow excessive oil, grease, antifreeze or any other fluid to leak from a vehicle. The Master Association may establish Master Association Rules for the parking of vehicles within the Development. If there is any guest parking provided in the garage of the Development, such parking shall be subject to the Master Association Rules.

**(d)** The Master Association may cause the removal of any vehicle or other item wrongfully parked or stored within the Development or operating in violation of this Section 7.4, including a vehicle owned by an Owner, occupant or its guest, to be towed and stored at the vehicle owner's expense and the Owner or occupant responsible for the presence of such vehicle shall indemnify, defend and hold the Master Association, its Board Members, officers, managers and employees harmless for any damage to Persons or property which may result. Before removing any vehicle as provided herein, the Master Association shall comply with the requirements of Vehicle Code Section 22658 in effect on the date of this Declaration or as amended. If said Vehicle Code section is amended, this provision automatically shall be amended in the same manner.

**(e)** Notwithstanding the foregoing, the Master Association may cause the removal, without notice, of any vehicle or other item parked or stored in a marked fire lane, within fifteen (15) feet of a fire hydrant, exit path, in a parking space designated for disabled persons without proper authority, or in a manner which interferes with any entrance to, or exit from, the Development or any parking space or Condominium located thereon.

**(f)** Use of any motorcycle parking spaces or bicycle parking spaces in the Development, if any, shall be subject to the Rules of the Master Association.

**(g)** The right to have permitted vehicle(s) parked in the Development may be assigned or licensed to the Commercial Unit Owners, for use by the Owners, Commercial Tenants, guests, customers, clients and Invitees of the Commercial Units. Parking by the Owners, Commercial Tenants, guests, customers, clients and Invitees of the Commercial Units shall be subject to reasonable Rules of the Master Association.

**(h)** Use of any car share parking spaces in the Development, if any, shall be subject to the Rules of the Association.

**(i)** Use of any electric vehicles charging parking spaces in the Development, if any, shall be subject to the Rules of the Association.

**(j)** Use of the loading docks and any related facilities and delivery areas by the Owners and Occupants of the Residential Units shall be subject to the Rules of the Association. The Master Association and its Board, the Sub Associations and their Boards, and the Residential Unit

Owners shall not impose any rules, regulations or restrictions on access to or use of the loading docks and any related facilities and delivery areas by the Owners, Occupants, Commercial Tenants and Invitees of the Commercial Units. The loading docks and related areas and facilities and delivery areas shall be permitted to be used by the Owners, Occupants, Commercial Tenants and Invitees of the Commercial Units twenty four (24) hours a day, seven (7) days a week. Commercial Unit Owner(s), Commercial Tenant(s) and any permitted other user(s) of the loading dock are solely responsible for loading dock and security personnel to receive and monitor deliveries. Master Association is not responsible for any staffing of loading dock personnel outside of regular business hours.

**Section 7.5 Animals.**

**(a)** No animals, reptiles, snakes, rodents, birds, fish, livestock or poultry shall be kept in any Unit or elsewhere within the Development, except that domesticated dogs, domesticated cats, birds kept in bird cages, fish kept within an aquarium, or other animals as described in the Master Association Rules, may be kept as household pets within any Unit if such animal(s) are not kept, bred or raised for commercial purposes. With the exception of fish, there shall be no more than a total of two (2) pets kept in any Unit. No fish tank or aquarium with greater than thirty (30) gallons of water shall be permitted. In no event shall any fighting breed of dog be kept in any Unit or elsewhere in the Development, including, without limitation, Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier, Rottweiler, American Bull Dog, Tosa Inus, Doberman Pinscher, Presa Canario, Chow, Fila Brasileiro, Argentine Dogo, Akita, Mastiff, Alaskan Malamute, or Wolf hybrid, and all mixes of these breeds, except as otherwise required by law. The keeping of any dog or other pet shall be subject to applicable ordinances and regulations of the City and County of San Francisco and its agencies. Notwithstanding the foregoing, "disability assistance" dogs or other pet as certified by the applicable government authority for assistance of visually impaired persons may be permitted as required by law or approved by the Board, except that they shall be kept on a leash on the Common Area. An Owner or Occupant of a Unit, or other person bringing a disability assistance dog or pet onto the Development shall provide valid written verification upon request by the Master Association or its agent of the dog or pet's status as a licensed disability assistance animal. Notwithstanding the foregoing, if an Owner or Occupant feels threatened by another Owner's or Occupants disability assistance dog or animal, then the Board shall implement a process for reasonable rules and regulations concerning such disability assistance dog or animal, which may include required muzzling, leashing or other rules or restrictions, and the Board may refer such matter to a dispute resolution process to be determined by the Board. Such restrictions are subject to any modification required by law.

**(b)** The keeping and control of each type of pet shall be expressly subject to such controls or prohibitions as may be reasonably adopted by the Board from time to time. No pet may be kept on the Development if the Board, after a hearing, determines, in its sole good faith judgment, that it would result, would continue to result or has resulted in substantial noise or other annoyance or that it would be, would continue to be or has been obnoxious, menacing or threatening to a person of ordinary sensibilities living within a Unit in the Development. The Board shall specifically have the right to prohibit the keeping of any pet on the Property which is found to be a nuisance. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board, unless the Board determines it is an emergency.

**(c)** No pets shall be allowed in the Common Area except as may be permitted by the rules of the Master Association. No dog whose barking unreasonably disturbs other Owners shall be permitted to remain on the Development. Owners shall prevent their pet from soiling any portion of the Common Area and shall promptly clean up any fouling by their pet. Declarant, the Master Association or the Master Association property manager may cause any unauthorized pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City and County of San Francisco,

by calling the appropriate authorities, whereupon the pet's Owner (upon payment of all expenses connected therewith) may repossess the pet. Each person bringing or keeping a pet upon the Development shall be liable to the other Owners, their family members, guests, Invitees, Association personnel, property manager and staff, and tenants for any injury or damage to Persons or property proximately caused by such pet. Notwithstanding anything contained herein, each owner of a pet shall comply with each applicable ordinance and regulation of the City and County of San Francisco and its agencies. Animals may only be fed within the confines of an Owner's Unit; feeding of animals within the Common Area or otherwise outside an Owner's Unit is prohibited.

**(d)** Facilities such as pet grooming station, and an outside dog walking area, may be constructed on the Development. Access to and Use of such areas shall be subject to the Master Association Rules. The Board shall have the authority to limit, restrict or suspend any Owner or Occupant from accessing or using such pet areas in connection with such Owner's or Occupant's violation of any of the Governing Documents or Master Association Rules with respect to such pet areas. The Board shall have the authority to establish and charge fees for use such pet areas, including the right to change such fees from time to time. The Board shall have the authority to establish and enforce fines or penalties for violation of any Governing Documents or Master Association Rules with respect to such pet areas.

**Section 7.6 Garbage and Refuse Disposal.**

**(a)** All garbage, recycling and compost shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Garbage, recycling, compost and other waste shall, at all times, be kept in designated sanitary containers. All equipment for the storage or disposal of garbage, recycling and compost shall be kept in a clean, orderly and sanitary condition. Garbage, recycling and compost shall not be left outside an Owner's Unit in a hallway or other Common Area. All garbage, recycling and compost shall be placed in the applicable trash chutes or other available proper trash receptacle; provided that any trash chutes shall only be used for the permitted type of material. Any large boxes and moving materials and other packing from a Unit must be broken down by the Owner or Occupant of that Unit, and placed into the appropriate trash or recycling container.

**(b)** No oversize or bulky items whatsoever shall be placed in any trash chute that may cause the trash chute to become damaged, backed-up or clogged. If the Development includes a trash chute sorting system whereby trash, recycling and compost is to be sorted any placed in a designated chute or receptacle, then each Occupant shall be required to use such sorting equipment in the designated manner. Use of the trash chutes and other trash facilities shall be subject to Master Association Rules, including penalties that may be assessed against a Unit Owner for violation of such Rules.

**Section 7.7 Right to Lease.** With the exception of a Mortgagee in possession of a Unit following a default in a First Mortgage, a Foreclosure proceeding or any other deed or other arrangement in lieu of Foreclosure, no Owner shall be permitted to lease that Owner's Condominium for transient or hotel purposes which shall be defined as (i) rental for any initial period of less than one (1) year, or (ii) any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid services or the furnishing of laundry and linen subject to a fee, or (iii) any rental if the occupants or temporary users are renting the Unit, or room or other space therein as a vacation rental or short-term accommodation or lodging for an initial period of less than one (1) year. Subject to the foregoing restriction, the Owner of the Condominium shall have the right to lease that Owner's Condominium provided that the lease is for the entire Condominium (the taking in of a roommate by an Owner shall not be a violation of this clause), is in writing and is expressly made subject to the Governing Documents and further provided that the breach by the tenant of such covenants, conditions, restrictions, limitations, uses or rules shall also be a breach of the lease.

**(a)** Notwithstanding anything to the contrary in this Section 7.7 or elsewhere in the Governing Documents, the Owner of a Below Market Rate Unit shall not have the right to lease such Owner's Unit without the prior written approval of MOHCD or OCII. MOHCD or OCII shall have the right to restrict or prohibit the leasing of any Below Market Rate Unit(s). If a Below Market Rate Unit Owner is approved by MOHCD or OCII to lease such Owner's Unit, then the terms and conditions in Section 7.7(b) below shall apply to such lease, in addition to any terms and conditions imposed by MOHCD or OCII.

**(b)** In the event an Owner does lease that Owner's Condominium as herein provided, that Owner shall, within three (3) days of execution of the lease, provide the Board or the property manager with the following:

**(1)** Name and contact information of each permitted occupant;

**(2)** Current address, telephone number and email of the Owner;

**(3)** A statement by the Owner that the tenant has received a copy of the Declaration and any amendment thereto, the Articles, the Bylaws, the Master Association Rules, any parking rules, any rules and regulations of the Architectural Control Committee, and that such tenant has been advised of any obligation that tenant may have thereunder. Such statement shall include notice to the tenant of the Master Association's and Declarant's right of entry into the Unit after forty-eight (48) hours' notice or in the event of an emergency;

**(4)** A statement by the Owner that the lease does not relieve the Owner of that Owner's obligation to pay each and every Assessment to the Association;

**(5)** The duration of the lease;

**(6)** If requested by the Association or property manager, an acknowledgment by the Owners and tenant of any particular Master Association Rules concerning leasing in the Development, including Master Association Rules that must be part of the lease; and

**(7)** A copy of the lease, if requested by Declarant or the Master Association.

In the event that any tenant's lease is renewed, the Owner shall notify the Board or the property manager if there are changes to any of the information described in subsections 7.7(1) or (2) above.

**Section 7.8 Radio and Television Antennas; Satellite Dishes; External Lines, Wiring or Equipment.**

**(a)** No television, video or radio pole, antennae, satellite dish, cable or other transmission and/or reception equipment, other similar external fixtures (collectively "Antenna Equipment"), other than that originally installed by Declarant or approved by the Architectural Control Committee and any replacements thereof, shall be installed, constructed or maintained on or within the Development:

**(i)** On or within any property which is not within the exclusive use or control of the Unit Owner where the Owner, as provided in 47 C.F.R. § 1.4000 and any other applicable laws, rules and decisions related thereto (collectively, "Antenna Laws") or restrictions;

**(ii)** In any location in the Development if, in the opinion of the Board, such location would be unsafe, or compromise any exterior surface of any building or roof area such that moisture may intrude into the building; or

**(iii)** That is of a size greater than permitted by the Antenna Laws.

**(b)** Before any Antenna Equipment may be installed in the Development, written notice of such installation shall be provided to the Master Association. Any construction, installation or maintenance of any Antenna Equipment that is greater than one meter or less in length or diagonal measurement and/or not in strict compliance with subsections (i)-(iii) above, shall be permitted only with the prior written approval by Declarant or the Architectural Control Committee. The Declarant or Master Association may impose reasonable restrictions and architectural guidelines for the construction, installation and maintenance of any Antenna Equipment, so long as such restrictions and guidelines are not inconsistent with the Antenna Laws. Such restrictions and guidelines may include, without limitation, location, color, screening, methods of construction and installation, qualifications and insurance requirements for installers or contractors, and indemnification of the Master Association and its Members related to such construction and installation.

**(c)** Under no circumstances shall any Antenna Equipment be constructed, installed or maintain on or within the Common Area, including, without limitation, any Common Area roof area or exterior wall, without the prior written approval of Declarant or the Architectural Control Committee.

**(d)** In the event that any common central radio and/or television antenna system, cable television system, satellite dish or other central television reception system (collectively, "Common Antenna") is installed by Declarant or the Master Association and designated for shared use by the Unit Owners, an Owner may be required to use such Common Antenna in lieu of any private Antenna Equipment. In such circumstances, an Owner may, with prior written approval by the Declarant or Board, connect to such Common Antenna. Before any Owner may connect to any such Common Antenna, such Owner must submit an application to Declarant or the Board, and the Declarant or the Board shall have the right to impose reasonable conditions on any connection to and use of such Common Antenna. Each Owner shall be responsible to set up and pay for its own individual account with the service provider, at no cost to the Master Association.

**(e)** Declarant or the Master Association may, but are not obligated to, provide a limited and defined area on a roof of a Condominium Building that may be used by the Owners for the purposes of installation of Antenna Equipment; provided, however, that any such installation shall be strictly subject to rules and regulations imposed by Declarant or the Board. In such circumstances, an Owner may be required to use such defined area rather than any other roof area for installation of Antenna Equipment. Before any Owner may use any such area, such Owner must submit an application to Declarant or the Board, and Declarant or the Board shall have the right to impose conditions on the use of such area.

**(f)** In order to prevent any water intrusion or leakage into the roof or walls of any building in the Development due to the creation of holes or punctures in connection with the installation of any Antenna Equipment, there shall be absolutely no drilling, holes or other punctures in any portion of the exterior of any building in the Development including, without limitation, any exterior walls, decks, terraces, floors, ceilings or roof areas, or exterior systems, without the prior written approval of Declarant, Board or Architectural Control Committee. Any such actions by an Owner or Occupant of a Unit, without the prior written approval of Declarant, Board or Architectural Control Committee, shall void any applicable warranties provided to a Unit Owner by Declarant related to finishing, water intrusion or leakage caused by, arising from or related to such actions.

**(g)** No Antennae Equipment shall be constructed or installed in any portion of the Development without first obtaining all required governmental permits.

**(h)** Nothing herein this Section 7.8 shall be construed to (i) restrict or limit in any manner Declarant's right to install any Antenna Equipment or any other similar improvements on any portion of the Property in connection with the development and construction of the Development or any portion thereof, or (ii) restrict Declarant's or the Board's rigbt to authorize any cable, telecommunication, television or radio franchisee or other provider of similar services to provide cable television, internet, satellite dish, telecommunication, radio or other similar services to the Development.

**Section 7.9** **Power Equipment; Hazardous Materials.** No power equipment, hobby shops or car maintenance, other than emergency work, shall be permitted in the Development. Owners shall not use or keep on the Development any gas, solvent, kerosene, caustic material, harmful chemicals, inflammable substance or other combustible substance, or other hazardous material. All cleaning materials or other potentially harmful or hazardous materials shall be stored and used in a safe manner and in strict compliance with product guidelines and in compliance with any applicable governmental rules or regulations. No tank for the storage of gas, liquid, explosive or any flammable substance shall be stored on or in the Development unless such installation is done by Declarant, except that a typical propane tank for a barbeque grill may be kept in the Development if approved by Board, subject to the Master Association Rules and this Declaration.

**Section 7.10** **Liability of Owners for Damage.** The Owner of each Unit shall be liable to the Master Association for all damages to the Common Area caused by such Unit Owner or any guest, Occupant or Invitee of such Owner's Unit or the pet of any such party.

**Section 7.11** **Storage.** Except as otherwise provided in this Declaration, nothing shall be stored in the Common Area, in any Exclusive Use Common Area, or on any deck or patio (except for storage areas designated for storage purposes) without the prior written consent of the Board. Decks and patios shall not be used for storage of bicycles or any other items. No perishable items, combustible substance or other hazardous material whatsoever shall be stored in any storage area, provided that typical products used in connection with a permitted use of a Commercial Unit shall be permitted, so long as any such products are stored according to applicable product guidelines and prudent business practices. Each Owner is solely responsible for any loss, damage or theft of any items stored in any storage areas or other portion of the Development by an Owner or occupant of an Owner's Unit.

**Section 7.12** **Declarant's Sales and Leasing Activities.** Declarant and Declarant's successors and assigns may use any portion of the Common Area and/or one (1) or more of the various Units owned by Declarant from time to time as a sales model, design center or display and sales or leasing office, and may maintain reasonable displays and conduct reasonable activities related to sales and customer service therein, until such time as the last Unit is sold or leased.

**Section 7.13** **Signs.** No commercial sign of any kind shall be displayed to the public view on or from any Residential Unit or the Common Area without the prior written consent of the Board subject to the following exceptions:

**(a)** Development identification signs or informational signs approved by the Board;

**(b)** Signs advertising any Condominium for sale or exchange of a reasonable design and size and in a reasonable location as previously approved in writing by the Board; and

(c) Signs maintained by Declarant in connection with its sales and marketing activities for the Development, and signs maintained by Declarant or ULLICO pursuant to the ULLICO Mortgage (or any other written agreement between Declarant and ULLICO). Notwithstanding anything contained herein, any sign which is displayed shall conform to each applicable City ordinance and regulation regarding signs.

(d) Noncommercial signs may be restricted by the Board as provided in Civil Code Section 4710.

(e) No Owner or Occupant of a Unit, or such Owner's or Occupants agent or representative, shall place any folding sign or sign on a stand on the sidewalk in front of, adjacent to or across the street from, any portion of the Development.

(f) The rights of Owners to display typical and unobtrusive religious, holiday and political signs, symbols and decorations inside their Units of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Master Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Unit.

(g) Subject to the provisions of Section 11.4 of this Declaration, no sign of any type or purpose with dimensions greater than twelve inches (12") in height by twenty-four inches (24") in width shall be displayed on or from any Residential Unit, except for signs maintained by Declarant in connection with sales or leasing activities, which shall not be subject to any restrictions on signage or related advertising. Subject to the provisions of Section 11.4 of this Declaration, no more than one (1) permitted sign shall be displayed from any Unit at any given time.

**Section 7.14 Spas and Hot Tubs; Whirlpool Bathtubs.** Spas or hot tubs outside of the bathroom shall not be permitted in a Unit without the prior written approval of the Board. Spas or hot tubs shall not be permitted on any deck or terrace area. A jetted bathtub or whirlpool bathtub within a bathroom shall be permitted, subject to the reasonable rules and regulations of the Board. Any associated motor or other equipment shall be reasonably insulated in order to reduce sound transmission to adjacent Units. In consideration of potential noise intrusion to adjacent units and the occupants thereof, no Owner shall operate any jetted bathtub or whirlpool bathtub in any Unit for longer than thirty (30) minutes during any two hour period between the hours of 7 a.m. and 11 p.m. Such equipment shall not be operated at all between the hours of 11 p.m. and 7 a.m. Owners acknowledge that adjacent Unit may have a jetted bathtub or whirlpool bathtub in compliance with this Section, and that there will be some amount of sounds transference and vibration associated with such equipment that may be heard or experienced from an Owners Unit.

**Section 7.15 Combination of Residential Units.** Contiguous Residential Units may be combined for use as a single residence with the Master Association Board's approval or Declarant's approval, prior to election of the Master Association Board. A Unit Owner with contiguous Residential Units shall have an easement over the Common Area and ceilings, floors and demising walls between that Owner's Units in order to perform a combination of that Owner's Units, subject to the terms of this Section 7.15. Before the Master Association Board shall consent to any such combination (except for Unit combinations accomplished by Declarant, or by an Owner or buyer of adjacent Units authorized by Declarant, prior to the conveyance of all Units in the Development by Declarant, which combination and all related plans and construction activities may be approved by Declarant in its sole discretion, and which shall not require Master Association Board approval), it shall first receive and give its approval of:

**(a)** Architectural plans;

**(b)** A certificate of a structural engineer licensed in the State of California and approved by the Master Association Board stating that those portions of the Common Area affected by the proposed combination are not required for structural support;

**(c)** A bid by a contractor licensed in the State of California and approved by the Master Association Board setting forth the cost to make the proposed combination and the time within which the combination could be completed;

**(d)** A bond naming the Master Association Board as an obligee (or other security reasonably approved by the Master Association Board) to assure the prompt completion of the combination in a workmanlike manner free of mechanics liens;

**(e)** All building and other governmental permits required for the construction;

**(f)** A certificate of an electrician and/or plumber, as applicable, licensed in the State of California setting forth in detail the effect the proposed combination would have on any plumbing and wiring within the Common Area to be affected by the proposed combination; and

**(g)** Any other reasonable requirement of the Master Association Board.

The Unit Owner of such combined Residential Units shall be entitled to the votes and shall be obligated to pay the Assessments on each of the owned Units in the same manner as if they had not been combined. The Unit Owner of such Units to be combined shall have an easement over the Common Area boundary walls and bearing walls for the purpose of causing such Units to be combined.

The Master Association Board shall permit reconstruction of such Residential Units as independent Units in conformance with the Condominium Plan upon the Board's receipt and approval of items (a) through (g) above relating to such reconstruction. No Unit shall be independently conveyed, leased or transferred as an independent Unit unless and until such reconstruction has been accomplished

In order to prevent any water intrusion or leakage into the roof or walls of any building in the Development due to the creation of holes or punctures in connection with the combination of any Units, there shall be absolutely no drilling, holes or other punctures in any portion of the exterior of any building in the Development including, without limitation, any exterior walls, floors, ceilings, roof areas or any exterior system, without the prior written approval of the Master Association Board, or Declarant prior to election of the Master Association Board.

Any construction work in connection with the combination or separation of Units described in this Section 7.15 shall be subject to, and performed pursuant to, valid permits and approvals from the San Francisco Planning Department and Department of Building Inspection.

**Section 7.16 Water Beds; Aquariums.** Water beds shall not be permitted in the Development. No aquarium containing more than thirty (30) gallons shall be permitted in any Unit.

**Section 7.17 Floor Coverings.** No change in the type of floor covering materials as were originally installed in the Units shall be permitted except with the written consent of the Architectural Control Committee. To reduce sound transmission, all Units above other Units shall have seventy-five percent (75%) of all floor areas in each room except kitchens and bathrooms covered with carpet, rugs or other material approved by the Architectural Control Committee that provides equivalent insulation

against sound transmission to the Unit below. If any Owner desires to install carpeting, and if such installation is approved by the Architectural Committee, each installation of carpeting shall include carpet padding or carpet cushion which meets or exceeds the specifications for Class 1 padding (Heavy Traffic, Residential or Commercial). All rugs shall be of sufficient thickness and/or shall include padding to provide adequate insulation against sound transmission to the Unit below. The installation of any type of hard surface flooring in a Unit shall include sound dampening and/or insulating materials in order to reduce sound transmission, as approved by the Architectural Control Committee. If any change is proposed to any floor covering in a Unit, the Architectural Control Committee shall require that the replacement covering provide the same or better acoustical characteristics as the floor covering that is being replaced, including, without limitation, designed to reduce sound transmission. Without limiting the generality of the foregoing, any proposal to install any hardwood flooring in any bedroom shall in particular be subject to approval by the Architectural Control Committee, and shall include acoustic underlayment and sound dampening and/or insulating materials in order to reduce sound transmission with a Field Measured rating of 55 or better as baseline.

**Section 7.18 Conduct Affecting Insurance.** Nothing shall be done or kept in any Unit or Exclusive Use Common Area appurtenant thereto, or in the Common Area, which will unreasonably increase the rate of insurance on the Common Area or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

**Section 7.19 Common Utilities.** No change in the utility requirements of a Unit may be accomplished by an Owner without the prior approval of the Board if such utility is metered on a meter shared by other Units or the Common Area. Except for work by the Declarant, no major power tools or other power-consuming devices shall be operated in the garage, parking areas or other portions of the Common Area without prior approval of the Board.

**Section 7.20 Roof Areas.** No person except Declarant or a person authorized thereby, and except maintenance personnel authorized by the Board or Association manager, shall walk on any roof area without the prior consent of the Board or Association manager, except for (i) such areas designated for use by the Owners, such as any rooftop terrace residential amenity area or Residential Facilities, and (ii) any Exclusive Use Common Area roof deck constructed by Declarant as described in Section 2.2(c)(1).

**Section 7.21 Owner Responsibility for Guests, Lessees, Invitees.** Each Owner shall be responsible for compliance with the provisions of this Declaration and the Governing Documents and any Master Association Rules by his guests, co-inhabitants, lessees, tenants, Occupants and other Invitees (including, without limitation, employees, customers, guests and Invitees of any such party).

**Section 7.22 Compliance with Laws.** No Owner shall permit anything to be done or kept in his or her Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

**Section 7.23 Damage to Common Area and Personal Injuries.** Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, Tenants, Occupant, guests, co-inhabitants, or Invitees to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of the deed for his or her Unit, agrees for himself or herself and for the members of his or her family, contract purchasers, co-inhabitants, tenants, Occupants, guests or Invitees to indemnify each and every other Owner and to hold such Owner harmless from, and to defend such Owner against, any claim by any Person for personal injury or property damage occurring (a) within the Unit or appurtenant Exclusive Use Common Area of that particular Owner, and (b) within any exclusive easements over the

Common Area appurtenant to that Owner's Unit or appurtenant Exclusive Use Common Area, unless the injury or damage occurred by reason of the negligence of another Owner temporarily visiting in said Unit or portion of the Common Area subject to an exclusive easement appurtenant to the Unit or is fully covered by insurance.

**Section 7.24** **Noise Abatement.** All stereos, televisions, radios, tape recorders, computers, vacuum cleaners, hair dryers, exhaust fans, tools, exercise equipment or similar noise producing products located in an Owner's Unit shall be operated in such a manner that they cannot be unreasonably heard in any other Unit in the Development during the hours of 11 p.m. to 7 a.m. Each Owner and occupant of a Unit shall comply with any Rules of the Master Association with respect to noise and shall cause no noise which unreasonably disrupts another Owner or occupant's use of their Unit. Speakers shall not be placed on demising walls or directly on floors without taking appropriate mitigating measures to reasonably reduce sound transmission.

**Section 7.25** **Use of Decks, Terraces and Courtyards.** Subject to the Master Association Rules, no activities shall occur on any Exclusive Use Common Area deck or terrace that will cause an unreasonable disturbance to Owners or Occupants of other Units. Each Owner shall, at all times, keep that Owner's deck and terrace free and clear from debris and maintain it in a neat, clean, attractive, safe and first-class manner. No owner shall leave any personal items on any Common Area courtyard, roof deck or other common area shared by all Owners when that Owner is not present. In recognition that decks and terraces may have open decking to allow for proper drainage, or may be situated such that runoff from said area may drain onto the Common Area, an Owner shall not be responsible to any other Owner or the Association for the unintentional spillage of water or other inoffensive or non-harmful material from that Owner's deck or terrace through such open decking or drainage; provided, however, that an Owner shall not allow excessive amounts of water to pool or collect upon, spill or drain from that Owner's deck or terrace. Owner's shall keep water collection basins underneath any plants located in decks and terraces in order to prevent water from leaking from such plants onto or from the surface of the deck or terrace. Decks and terraces shall not be used for storage of bicycles or any other items. Decks and terraces shall not be used for the drying of clothes. Except as may be specifically permitted in this Declaration, no clotheslines, flagpoles, machinery or equipment, other than that originally installed by Declarant or approved by the Architectural Control Committee, shall be permitted on any deck or terraces.

**(a)** If any items are placed or stored on any Exclusive Use Common Area deck or terrace that are deemed unsightly or in disrepair by the Board is its reasonable discretion, then the Board may require that such items be removed by such Owner or Occupant. The Board shall have the authority to modify the rules and restrictions described in this Section 7.25 above. The Master Association Board shall have the authority to adopt Master Association Rules concerning storage of items on Exclusive Use Common Area decks or terrace.

**(b)** The flooring, ceiling and walls of any deck or terrace shall not be punctured in any way. Nothing shall be attached or otherwise connected to the flooring, ceiling or walls of any deck or terrace in such a manner as that causes the flooring, ceiling or walls of the deck or terrace to be pierced or punctured.

**(c)** Nothing shall be placed, kept or stored on any Exclusive Use Common Area deck or terrace or any railing that may be at risk of flying off or falling from the deck, terrace or railing. Owners and Occupants are advised that high winds or other natural occurrences may cause items to fly or fall off a Exclusive Use Common Area deck, Terrace or railing, and Owners and Occupants shall take precautions to avoid any items from flying or falling off a Exclusive Use Common Area deck, terrace or

railing onto any portion of the Property or public property adjacent to the Development. Even small items falling from a deck, terrace or railing may cause severe injury to persons and/or property below.

**(d)** Outdoor cooking, barbequing, smoking of any kind, incense, candles and any other activity that causes an odor, smoke, fumes or ash shall not be permitted on any Exclusive Use Common Area deck or terrace appurtenant to any Unit. The Master Association Board shall have the authority to enact Master Association Rules regulating or prohibiting similar activities in any shared Common Area used by the Occupants of the Residential Units.

**Section 7.26 Window Coverings.** Curtains, drapes, blinds, shutters or other window coverings visible from the street or Common Area shall be restricted to a white color, unless expressly approved by the Board or the Architectural Control Committee. Windows shall not be covered with newspaper, aluminum foil, or other materials not designed for covering windows.

**Section 7.27 Architectural Control.** In order to promote a harmonious and cohesive physical environment within the Development, and to prevent additions, alterations, or replacements which may adversely affect property values throughout the Development, the Board is empowered to promulgate and enforce architectural controls, guidelines, rules and restrictions as described herein this Section. The ultimate responsibility shall remain with the Board, but the Board may delegate its authority to an Architectural Control Committee (the "Committee") as provided herein and in Article XI of the Bylaws. The members of the Committee shall be appointed as described in Article XI of the Bylaws. The Board or the Committee shall establish reasonable, objective standards clearly ascertainable to the Owners, and shall not act arbitrarily or capriciously in the process of reviewing plans. Such standards may include construction guidelines, rules and regulations, including, without limitation, insurance, permitted hours of construction, scheduling of construction activities, procedures for access to a Condominium Building, use of elevators, parking of vehicles, storage of materials, clean up, control of dust and debris, noise controls, and other typical construction guidelines. The emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Development, as well as the integrity of acoustical, utilities, structural and waterproofing systems of a Condominium Building. The Board and the Committee shall base their decisions on what is in the best interests of the Development as a whole, and not upon what will appease a particular Member or group of Members. Both the Board and the Committee shall operate pursuant to the following guidelines:

**(a)** No construction, installation, addition, improvement, repair, wiring, exterior painting, replacement, alteration or removal of any part of the Development or any building structure, including flooring, interior and exterior walls, or any portion of a Unit that can be seen from the Common Area or any other Unit, or replacement or modification of any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling which might in any way increase the sound transmission, resonance or reverberation from one Unit to another, shall be commenced, installed, erected, painted, repainted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board or by the Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may decorate, paint or repaint the interiors of the Owner's Unit, provided such decorating does not impair the structural, mechanical or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including roofs or bearing walls), and does not involve flooring of the Unit or the window covering of the Unit.

**(b)** Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the Board or Architectural Control Committee for approval as to quality of workmanship and design and harmony with existing improvements, and as to location in relation to surrounding structures, topography, and finish

grade elevation. Upon submittal of such plans and specifications to the Board or Architectural Control Committee, the Board or the Committee or its authorized agent or representative shall provide a written response to such plans and specifications to the applicant in reasonable detail within forty five (45) days from submission. If the Board or the Committee or its authorized agent or representative does not provide a written response within forty-five (45) days from the date of submission, such plans and specifications shall be deemed disapproved. No permission or approval shall be required to rebuild in accordance with the original plans and specifications or plans and specifications previously approved by the Board or by the Committee. Nothing contained in this Section shall be construed to limit the right of an Owner to paint or remodel the interior of that Owner's Unit.

**(c)** No landscaping or physical improvements or additions shall be made to any deck or patio areas that are visible from the street or Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or the Committee.

**(d)** Any decision of the Committee to permit improvements, modifications or alterations shall not be unreasonable, arbitrary or capricious and shall not violate any governing provision of law. If such decision disapproves the proposed change or changes, it shall include both an explanation of the reason for disapproval and a description of the reconsideration procedures of the Committee. Reconsideration of any such disapproval shall occur at an open meeting of the Committee conducted in accordance with the Bylaws, and the Committee's written decision thereon shall be issued within the time frames specified in the Architectural Guidelines. 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 then proposed work will result in improvements that can be seen from any other Condominium, the 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: contractor licensing requirements; insurance requirements; completion and labor and materials bonds or other acceptable collateral; and 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.

**(e)** Approval of plans or specifications by the Board or the Committee shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and its members, harmless from any and all liability arising out of such approval.

**(f)** Before commencement of any alteration or improvements to a Unit or Exclusive Use Common Area the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

**(g)** All work approved by the Board or the Committee shall be completed in compliance with the approvals granted, and shall be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board

has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

**(h)** The Board or the Committee or its authorized agent or representative shall have the right to inspect work within thirty (30) days after a notice of completion has been delivered to the Board or the Committee by the Owner. If after such inspection the Board or Committee determines an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural review functions under this Section 7.27, the Committee shall notify the Board, and the Board shall provide notice and a hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural review functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Development, or to remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board in its discretion may grant, the Board may (i) cause the non-complying improvement to be removed, (ii) remedy the non-compliance, or (iii) institute legal proceedings to enforce compliance or completion.

**(i)** The Committee or the Board may condition its approval upon the Owner recording a "Notice of Non-Responsibility" or similar document protecting the Association or other Owners from any mechanics lien that may be recorded because of such alteration or improvement.

**(j)** Nothing contained in this Section 7.27 shall be construed as requiring Declarant to obtain any approval for the construction, installation, completion or renovation of the Development or any improvements thereon. In addition, Declarant, or its successor or assign shall not be subject to the review or approval requirements of this Section 7.27 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.

**(1)** In furtherance of the foregoing, Declarant shall have the express right to assign its rights and privileges described in this Section 2.27(j) above to an Owner of any penthouse Unit. Declarant reserves the right to sell any penthouse Unit in a partially completed "shell" condition, so that a buyer of such penthouse Unit(s) will complete the construction, installations and improvements to such penthouse Unit(s). In such event, a buyer of any penthouse Unit(s) shall be permitted to perform any construction, installation and improvement activities in order to complete the build out and improvement of the penthouse Unit(s), and the review and approval of any Unit Owner or the Association shall not be required.

**(k)** Notwithstanding any provision herein to the contrary, in no event shall any Owner or occupant puncture or cause any holes or opening in any deck or terrace surface or wall without the express written consent of the Board or Committee. If approved, any such hole or opening in a deck or terrace surface or wall shall be specifically designed to prevent any leakage, seepage or intrusion of water or moisture of any kind into the building.

**(l)** Notwithstanding any provision herein to the contrary, in no event shall any Owner or occupant drill, cut, puncture or cause any holes or opening in any wall or ceiling where refrigerant lines are located.

**(m)** In reviewing plans, the Architectural Control Committee shall comply with the requirements of Civil Code Section 4765, and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between the provisions of this Section 7.27 and Civil Code Section 4765, Civil Code Section 4765 shall control to the extent of the conflict.

**(n)** The Board or 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. Failure of the applicant to make all payments required hereunder shall relieve the Committee from the time constraints of this section until such payments are made.

**(o) Architectural Review of Alterations, Modifications and Improvements to the Commercial Units.** In order to allow the Commercial Unit Owners to design, improve, construct and operate the Commercial Units in a manner deemed necessary by the Commercial Unit Owners, the architectural review and approval process for the Commercial Units is different than that for the Residential Units.

**(1)** Except as expressly provided in this subsection 7.27(o), the provisions of Section 7.27 shall not apply to any construction, renovation, alteration, installations or other improvement work and related activities with respect to any Commercial Unit(s), individual commercial space(s) located therein and related Common Area, including, without limitation, any tenant improvement work for a Commercial Unit or individual commercial space (collectively, "Commercial Work"), whether performed by Declarant, a Commercial Unit Owner or a Commercial Tenant.

**(2)** A Commercial Unit Owner or Commercial Tenant shall not commence any Commercial Work unless plans and specifications for such Commercial Work have been approved in writing as described as described in this Section 7.27(o) below.

**(3)** Notwithstanding anything to the contrary in this Declaration or this 7.27(o), with respect to any Commercial Work to be performed in connection with the initial construction, build-out or improvement of any Commercial Unit(s) and any individual commercial space(s), including, without limitation, any tenant improvement work, whether performed by Declarant, a Commercial Unit Owner or a Commercial Tenant or any contractor: Declarant, and not the Association, Board or Architectural Control Committee, shall have the sole right to review and approve plans, specifications and related construction and improvement work and related activities, and impose any conditions and requirements with respect thereto. The Association, Board or Architectural Control Committee shall not be permitted to restrict or impose any conditions on any such Commercial Work performed in connection with the initial construction, build-out or improvement of any Commercial Unit(s) and any individual commercial space(s), including, without limitation, any tenant improvement work, whether performed by Declarant, a Commercial Unit Owner or a Commercial Tenant or any contractor. In furtherance of Declarant's rights described above, Section 11.4 of this Declaration shall also apply to any such Commercial Work and related activities performed by or at the direction of Declarant.

**(4)** After the initial construction, build-out and related tenant improvement work for the Commercial Units and individual commercial spaces therein, the right to review and approve plans, specifications and related construction and improvement work and related activities for any Commercial Work, and impose any conditions and requirements with respect thereto, shall be restricted as described below.

**(A)** Until the fifth anniversary of the close of escrow for sale of the first condominium in the Development, Declarant, and not the Association, Board or Architectural Control Committee, shall have the sole right to review and approve plans and specifications, and impose any conditions and requirements with respect thereto, for any Commercial Work and related activities, which right shall be subject to the terms of this 7.27.

**(B)** After the fifth anniversary of the close of escrow for sale of the first condominium in the Development, the Board or the Architectural Control Committee shall have the right to review and approve plans and specifications, and impose any conditions or guidelines with respect thereto, for any Commercial Work and related activities, which right shall be subject to the terms of this 7.27.

**(5)** The right to review and approve plans and specifications, and the right to impose conditions and requirements with respect thereto, for any Commercial Work and related activities described in subsections 7.27(o)(4)(A) and (B) above shall be expressly limited to the purpose of identifying material issues directly related to (i) structural support elements of the Common Area of the Development, (ii) common utility facilities and systems servicing the Common Area or other Units, or (iii) exterior Common Area portions of the commercial storefronts. The reviewing party, whether Declarant pursuant to subsection (A) above, or the Board or the Architectural Control Committee pursuant to subsection (B) above, may impose commercially reasonable conditions in order to protect the structural integrity of the Common Area of the Development, prevent material adverse impacts to the common utility facilities and systems servicing the Common Area or the Residential Units, and structural integrity of the exterior facade of the building, but may not disapprove or unreasonably condition or delay approval of such Permitted Commercial Work, so long as such conditions are reasonably satisfied.

**(6)** With respect to the review rights described in subsections (A) and (B) above, the timeframes for submittal, review and approval of plans described in Section 7.27 shall apply, so long as such timeframes do not unreasonably delay performance and completion of the Commercial Work in a timely manner.

(7) Approval or disapproval of plans and specifications for Commercial Work and conditions related thereto by the Board, Architectural Control Committee or Declarant shall in no way make the Board, Architectural Control Committee or Declarant or any of their members or officers responsible for or liable for the improvements built after approval of the plans, or the operation, maintenance or repair of such improvements, and the Commercial Unit Owner whose plans are approved shall defend, indemnify and hold the Board, Architectural Control Committee or Declarant and their members or officers, harmless from any and all liability arising out of such approval, subject to the terms of this Declaration.

**(p)** **Architectural Control Committee**. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the second anniversary of the sale of the first condominium in the Development pursuant to a Public Report for the Development. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Development have been sold pursuant to a Public Report, or until the fifth anniversary of the sale of the first condominium in the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. In the event of death or resignation of any Committee member, said member's replacement shall be appointed by whomever (the Board or Declarant) appointed that member. A majority of the members of the Committee may appoint a

single member to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant thereto.

**Section 7.28** **Concrete Slabs.** Concrete slabs for the Development may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to extremely high tension ("Post Tension Slab"). Cutting into any Post Tension Slab in any building within the Development for any reason may be very hazardous and may result in serious damage to the Units or building and may cause personal injury. No Unit Owner shall cut into or otherwise tamper with any Post Tension Slab or any other slab, or permit or allow any other Person to cut into or otherwise tamper with any Post Tension Slab or other slab. Each Unit Owner shall disclose to any Person who rents, leases or purchases the Unit from the Unit Owner the existence of the Post Tension Slab and these limitations on cutting into or otherwise tampering with the Post Tension Slab or other slab. The Unit Owner shall indemnify and hold harmless Declarant, the Association and their officers, employees, contractors and agents from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by such Unit Owner or the tenants or renters of, or purchasers from such Unit Owner. No drilling or cutting whatsoever into the Post Tension Slab or any other slab shall be permitted without the prior written approval of the Board, and any cutting or drilling into the Post Tension Slab or other slab shall require the review, approval and oversight of a structural engineer or similar licensed professional at the expense of the Unit Owner, or option of Unit Owner to reimburse Association for any and all costs associated with such review and subsequent review incurred by the Association, if any.

**Section 7.29** **Legal Action.** The failure of any Unit Owner to comply with any provision of this Declaration, the Bylaws or the Master Association Rules, if any, shall give rise to a cause of action in the Master Association and/or any aggrieved Owner for the recovery of damages or for injunctive relief, or both, including reasonable attorney's fees, costs and expenses as may be determined by the court.

**Section 7.30** **Moving In/Out and Contractor Rules.** The Board may adopt Rules regulating the moving of property in and out of a Condominium and means of ingress and egress to and from the Condominium. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for elevator cabs, disposal of moving boxes, and the payment of fees or posting of collateral or security to pay for damage to the Common Area. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for elevator cabs, disposal and storage of construction materials and equipment, construction access routes, and the posting of collateral or security to pay for any damage to the Common Area. Notwithstanding the foregoing, Declarant in its sole discretion may issue special rules for hours and use of loading docks during initial move-ins of the Units, including scheduling move-ins at any time of day or night on any day of the week.

**Section 7.31** **Smoking Restrictions.** In order to engender a healthy and environmentally friendly atmosphere, and to reduce second-hand smoke that may be experienced by the Owners and occupants of the Development, there shall be no smoking of any kind, including any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, e-cigarette, e-cigars, e-pipes, vape pens, or e-hookahs, in any portion of the Development, including without limitation the Units, Common Area, and Exclusive Use Common Areas, except as otherwise required by law. In the event the Board is legally required to allow an occupant of a Unit to smoke, such smoking be strictly limited to the interior of that occupant's Unit, and such occupant shall take all precautions as may be reasonably requested by the Board in order to reasonably eliminate smoke and vapor escaping from that occupant's Unit, including, but not limited to, the use of extract fans to ventilate the Unit and limit smoke and vapor from entering the Common Area of the building or other units. In furtherance of the foregoing, in no event shall any smoking whatsoever

be permitted in any in any lobbies, hallways, corridors, walkways, lounges, garage area, garden areas, amenity areas, conference rooms, offices, courtyards or any other common facilities or amenities. The Board may adopt Association Rules concerning smoking in the Development, including, without limitation, fines, penalties and other disciplinary actions for violation of such Rules. All smoking in the Development shall be subject to the applicable ordinances of the City and County of San Francisco and State of California that may further restrict or prohibit smoking in the Development.

**Section 7.32** **Outside Air Intake Ducts Serving Units**. The outside air intake duct serving certain Units may transfer between certain Units. The duct providing outside air to a particular Unit may be located on the deck or balcony of an adjacent Unit. In order to prevent smoke, odors or other nuisance substances from being transferred from one Unit's deck or balcony through the outside air intake duct into an adjacent Unit, there shall be no outdoor cooking, barbequing, smoking of any kind, incense, candles or any other activity that causes any odor, smoke, fumes or ash on any Exclusive Use Common Area deck or balcony appurtenant to any Unit.

**Section 7.33** **Exposed Pipes and Sprinklers**. In the event that any pipes or sprinklers are exposed in a Unit or any closet inside a Unit, nothing shall be attached to or hung from any such exposed pipes or sprinklers. Clothes or other items shall not be hung from any such exposed pipes or sprinklers.

**Section 7.34** **Vanities, Islands, Sinks, Counters and Kitchen Cabinets**. Vanities, islands, sinks, counters and kitchen cabinets are not designed to be stood on or sat on. Standing or sitting on a vanity, island, sink, counter or kitchen cabinet may cause it to move, break or collapse. There shall be no standing or sitting on a vanity, island, sink, counter or kitchen cabinet installed in any Unit.

**Section 7.35** **Heat Pump/Forced Air Heater Closet**. Units may have a closet containing a heat pump or forced air heater. To avoid damage to such system or equipment, and for safety purposes, nothing shall be placed or stored in any closet containing a heat pump or forced air heater.

**Section 7.36** **Access Panels**. Certain Units may contain access panels providing access to various Lines, pipes, valves, utilities, building systems and other equipment. Units Owners and Occupants shall not be permitted to aces or open any access panel located with a Units

**Section 7.37** **Window Shades in Certain BMR Units**. Certain Below Market Rate Units may be installed with window shades by Declarant. Owners and Occupants of such Below Market Rate Units shall not tamper with or remove any window shades installed in the Unit by Declarant.

## ARTICLE 8
## MORTGAGE PROTECTION

**Section 8.1** **Validity of Mortgage Lien.** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale or otherwise.

**Section 8.2** **Notice to Eligible Mortgagees and Eligible Insurers and Guarantors.** Upon written request to the Master Association or a Sub Association identifying the name and address of the Eligible Mortgagee or Eligible Insurer or Guarantor and the applicable Unit address, such Eligible Mortgagee or Eligible Insurer or Guarantor shall be entitled to timely notice of:

**(a)** Any condemnation loss or any casualty loss which affects a material portion of the Development or any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor, as applicable;

**(b)** Any delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unpaid for a period of sixty (60) days;

**(c)** Any default in the performance of an obligation under the Governing Documents by a Unit Owner of a Condominium subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unperformed for a period of sixty (60) days;

**(d)** Any lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Master Association or a Sub Association; or

**(e)** Any proposed action which would require the consent of Mortgagees of First Mortgages as specified in Section 8.6.

Any failure by the Master Association or a Sub Association to give such notice of default shall not in any event relieve the Unit Owner of responsibility to cure the default or prevent the Master Association or a Sub Association from enforcing the performance of the defaulted obligations by any of the procedures provided for in the Governing Documents.

**Section 8.3 Notice of Condemnation or Destruction.** In the event of the total or substantial destruction of, or the commencement of eminent domain proceedings or other acquisition procedures by a condemning authority against the Development or any portion thereof, Mortgagees of First Mortgages shall be given timely written notice of such destruction or proceedings.

**Section 8.4 Limitation on Right of First Refusal.** The right of a Unit Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Master Association or a Sub Association. In the event there is permitted a right of first refusal in favor of any other Person, it shall not be based upon the race, color, religion, sex, sexual preference, marital status, national origin or ancestry of the vendee and it shall not impair the rights of a holder of a First Mortgage:

**(a)** To foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage;

**(b)** To accept a deed (or assignment) in lieu of Foreclosure in the event of a default by the Mortgagor; or

**(c)** To sell or lease a Condominium acquired by the Mortgagee.

**Section 8.5 Priority as to Proceeds and Awards.** Any language contained in this Declaration to the contrary notwithstanding, no Unit Owner and no other party shall have priority over any rights of Mortgagees pursuant to their Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Area.

**Section 8.6 Consent by Mortgagees to Amendments.** Without the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Master Association and the approval of a majority of the Mortgagees of First Mortgages (unless a higher percentage of voting power of

Mortgagees of First Mortgages is specifically required elsewhere in this Declaration), the Master Association shall not materially and adversely, with respect to such mortgages, amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following:

**(a)** Voting rights;

**(b)** Assessments, Assessment liens or priority of such liens;

**(c)** Reserves for maintenance, repair and replacement of the Common Area;

**(d)** Insurance or fidelity bonds;

**(e)** Rights to use the Common Area or Exclusive Use Common Area;

**(f)** Responsibility for maintenance and repair of the Development;

**(g)** Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;

**(h)** Boundaries of any Unit;

**(i)** Reallocation of interests in the Common Area or Exclusive Use Common Area;

**(j)** Convertibility of Units into Common Area or of Common Area into Units;

**(k)** Leasing of Units;

**(l)** Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium;

**(m)** A decision by the Master Association to establish self management when professional management has been required previously by a Mortgagee of a First Mortgage;

**(n)** Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

**(o)** Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs;

**(p)** Any provisions which are for the express benefit of Mortgagees, insurers or guarantors of First Mortgages; or

**(q)** Amendments to provisions governing the fundamental purpose for which the Development was created (such as a change from residential use to a different use).

For purposes of this Section 8.6, implied approval by any Mortgagee of a First Mortgage shall be assumed when such Mortgagee fails to submit a response to any written proposal for additions or amendments to the Governing Documents within sixty (60) days after the Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**Section 8.7** **Restrictions on Certain Changes.** Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area by fire or other casualty, unless two-thirds (2/3) of all Mortgagees of First Mortgages (based on one vote for each Condominium encumbered) have given their prior written approval, neither the Master Association nor the Owners shall be entitled:

**(a)** By act or omission, to seek to abandon or terminate the Development, including, without limitation, in the event of damage or destruction of all or any portion of the Development;

**(b)** To change the Common Interest or obligations of any Condominium for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area;

**(c)** To partition or subdivide any Condominium;

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

**(e)** To use hazard insurance proceeds related to losses of Development property (whether related to Units or Common Area) for other than the repair, replacement or reconstruction of such Development property except as provided by statute in case of substantial loss of the Units or Common Area.

**Section 8.8** **Consent to Terminate Legal Status of Development.** Except as provided by statute or any other provision of the Governing Documents, in case of substantial destruction or condemnation of the Development, the consent of Owners of Condominiums holding at least seventy-five percent (75%) of the voting power of the Master Association and the approval of sixty-seven percent (67%) of Mortgagees of First Mortgages shall be required to terminate the legal status of the Development as a condominium Development, including without limitation, in the event of damage or destruction of all or any portion of the Development.

**Section 8.9** **Existing Defaults**. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial Foreclosure, deed in lieu of Foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration existing as of the date of such transfer which is noncurable or of a type which is not practical or feasible to cure.

**Section 8.10** **Annual Budget and Financial Statements**. Upon written request to the Master Association and Sub Associations, Eligible Mortgagees shall be entitled to receive copies of the annual budgets of the Master Association and Sub Associations and audited financial statements within the same time period that these items are distributed to Members

**Section 8.11** **Voting Rights on Default**. In case of default by any Owner, a First Mortgagee of that Owner may (i) pay any Assessments or take any action reasonably necessary to cure a default by such Owner with the same effect as such cure by the Owner itself and, (ii) upon notice to that Owner and the Master Association and Sub Association of which such Owner is a Member, exercise the voting rights of that Owner.

**Section 8.12** **Payment of Taxes and Insurance**. First Mortgagees may, individually or jointly, pay taxes or other charges that are in default and that may or have become a charge against any

Unit, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area. First Mortgagees making such payments that would otherwise be owed and paid by the Master Association or a Sub Association shall be owed a reimbursement for such expenditures from the Master Association and applicable Sub Association, provided that the Master Association or applicable Sub Association shall not be obligated to reimburse such First Mortgagee for such expenditures that are the obligation of the Unit Owner who is the mortgagor of such First Mortgagee.

## ARTICLE 9
## INSURANCE, DAMAGE OR CONDEMNATION

It is the intent of Declarant that all of the rights, duties and obligations of the Association and Board described in this Article 9 shall be the rights, duties and obligations of the Master Association only, and not the Sub Associations, except as otherwise expressly provided. Therefore the Master Association shall have all of the rights, duties and obligations of the Association described in this Article 9. References to the "Association" and the "Board" in this Article 9 shall mean and refer to the Master Association and its Board. All insurance policies obtained by the Master Association as described in this Article 9 shall provide coverage for the Master Association and its Members and shall also provide coverage for the Sub Associations and their Members.

As may be determined by the Master Association Board after consultation with an insurance advisor, the Association insurance policies described in Sections 9.4 and 9.5 may be obtained as single policies providing such coverage to the Master Association and its Members and providing such coverage to the Sub Associations and their Members, or may be obtained as separate policies by each of the Master Association and the Sub Associations. The Sub Associations and their Members

**Section 9.1 Fire and Casualty; Property Insurance.** The Association shall obtain a master blanket policy or policies of insurance covering all of the Development including all improvements now or hereafter constructed, erected or installed in the Development and all building service equipment and fixtures installed and located thereon or used in connection therewith, and including the interior of the Units as originally constructed, including built-in or set-in appliances; cabinets; countertops; floor coverings; interior walls, doors and windows; ceiling, floor and wall surface materials and coverings (e.g., paint, wallpaper, mirrors, carpets, tiles and hardwood floors); fixtures (including gas, electrical and plumbing); telecommunication and internet lines, cables, wiring and conduits; heating and air conditioning systems; but excluding additional improvements or upgrades added by the Unit Owner after completion of original construction. The Association's policy does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring within the Units, which are the obligation of the Unit Owners to insure as described in Section 9.10. The blanket policy or policies of insurance to be obtained by the Association pursuant to this Section 9.1 above shall insure the (i) Owners, (ii) Association, (iii) Declarant, and (iv) Mortgagees, as their interests may appear, against loss or damage by the perils covered by, and shall provide coverage at least as broad as, a current ISO "special form" policy or its equivalent (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, terrorism, water and other special extended coverage risks and the costs of demolition and debris removal) which may also be extended to include flood and earthquake insurance. Coverage shall be in an amount or amounts equal to full replacement value (i.e., one hundred percent (100%) of replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage and without any deduction for depreciation) with replacement cost valuation, with no coinsurance (or an "agreed amount" endorsement or its equivalent), ordinance or law coverage, and an "inflation guard" endorsement payable to the Association. Each such policy required to be maintained hereunder may be subject to a "deductible" or self-insurance amount as the Board deems prudent under the then existing circumstances. Each such policy shall provide for full

waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Declarant and their respective officers, directors, partners, agents, employees and tenants, if any, and as to all defenses based upon acts of the insureds or the existence of co-insurance (provided, however, that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waivers between the Association and Owners set forth herein). The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

**(a) Endorsements.** The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall also include, without limitation, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) pollution claims including mold, and (iii) plate glass, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board. The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall also include an endorsement requiring thirty (30) days of advance notice of cancellation or non-renewal (except for cancellation for non-payment, which shall require 10 days of advance notice).

**(b) 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 for repair of damage up to the amount of the property insurance policy deductible in the following circumstances: (i) where damage is caused by the fault of the Owner or that Owner's tenant or family members, Invitees or agents, and/or (ii) where damage is caused by the failure of some portion of, or component, in such Owner's Unit which the Owner is responsible maintain and repair. In cases where the damage affects more than one Unit, or a Unit and the Common Area, and subsection 9.1(b)(i) or (ii) above do not apply, each Owner is responsible for the cost to repair the Owner's Unit (and the Common Area immediately abutting or exclusively serving the Owner's Unit) up to the amount of the Association property insurance policy deductible. If the cumulative cost of such repairs exceeds the Association property insurance policy deductible, the amount of the deductible shall be prorated among the claimants based upon the proportion of each claimant's costs for repairs to his or her Unit and the Common Area bears to the total cost of repairs. The Association may levy an Individual Special Assessment against an Owner's Unit as authorized by Section 4.6 for the Owner's share of the Association property insurance policy deductible.

**Section 9.2 Boiler and Machinery Insurance.** The Association shall obtain a policy of Boiler and Machinery Insurance, if applicable, for any items listed below which are not covered in or as part of the fire and casualty insurance listed in Section 9.1, insuring the Owners, including the Association, against loss or damage to or because of boilers and other machinery, including but not limited to, all machinery and equipment for heating, ventilating, air conditioning, power generation and similar purposes (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, terrorism, water and other special extended coverage risks and the costs of demolition and debris removal) equal to full replacement value without deduction for depreciation with replacement cost valuation, with no coinsurance (or an "agreed amount" endorsement or its equivalent), ordinance or law coverage, an "inflation guard" endorsement payable to the Association.

The insurance policy to be maintained by the Association pursuant to this Section 9.2 shall also include, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) Consequential Damage, (iii) Hazardous Substances, and such other

endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

**Section 9.3** **Liability Insurance.** The Association shall obtain and maintain a policy or policies of an occurrence version Comprehensive General Public Liability Insurance with combined single limit of Bodily Injury and Property Damage Liability limits not less than Twenty-Five Million Dollars ($25,000,000) arising out of a single occurrence subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5805(b)(2). The Twenty-Five Million Dollars ($25,000,000) coverage described in the preceding sentence may be a combination of primary and excess policies. Such policy or policies shall include coverage for bodily injury, emotional distress, wrongful death and/or property damage, and shall name as insured and shall separately protect the Owners, the Association, the Board including their respective officers, directors, partners, agents, members, employees (including any manager appointed hereunder) family members, and their successors and assigns (both individually and as a class), any manager against any liability to the public or to any Owner (and such Owner's successors, assigns, tenants or lessees) resulting from, arising from, or incident to the ownership, operation, maintenance and use of the Common Area by the Association and the performance of its duties under the Declaration by the Association. Such policy or policies of liability insurance shall be primary and non-contributory with any other liability insurance policy maintained by such insureds covering the same liability.

Such policy or policies of liability insurance to be maintained pursuant to this Section 9.3 shall include the following extensions of coverage, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage: (i) Products/Completed Operations, (ii) Independent Contractors, (iii) Blanket Contractual Liability, (iv) Broad Form Property Damage, (v) Host Liquor Liability, (vi) Non-Owned and Hired Automobile Liability, (vii) Employees as Additional Insureds, (viii) Personal Injury Liability (Libel, Slander, False Arrest and Wrongful Eviction) with the "Employee Exclusion" deleted, (ix) Cross Liability Endorsement, (x) Severability of Interest, (xi) Hostile Fire Amendment to the Pollution Exclusion, and (xii) Terrorism (subject to determination by the Board that such Terrorism coverage is desirable and available at reasonable rates).

The Association may purchase and maintain a policy or policies of excess or umbrella liability to afford protection over and above the underlying Commercial General Liability, Automobile Non-Ownership and Hired Car Liability, Employers Liability, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage. In the event such policy or policies of excess or umbrella insurance coverage is obtained, the Board shall determine a reasonable amount of excess or umbrella liability insurance to protect the interests of the Development.

Any tort cause of action against any Owner arising solely by reason of an ownership interest as a tenant in common of the Common Area shall be brought only against the Association, pursuant to Section 5805 of the Civil Code, and not against any such Owner, if the Association maintained and has in effect for the tort cause of action, one or more policies of insurance including coverage for general liability of the Association, and the coverage is in the minimum amount of Three Million Dollars ($3,000,000). In no event shall such liability insurance coverage be less than the statutory minimum requirements for Association liability insurance described in Civil Code Section 5805. Reference is made to Civil Code Section 5805 for further detail regarding statutory minimum requirements for Association liability insurance.

**Section 9.4** **Board Members and Officers Liability.** The Association shall maintain a policy or policies insuring the Owners, individually and collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any director (including, without limitation, any advisory or *ex-officio* director) or any officer of the Association, as well as committee members and chairpersons, while acting in their capacity as such in the amount of at least Three Million Dollars ($3,000,000) for each occurrence, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5800(a)(4). Such limits are to be reviewed by the Board not less frequently than annually. Said policy or policies shall provide for a full waiver or subrogation against the insureds, a full waiver of all defenses based upon acts of insureds and shall further provide that said policy or policies cannot be canceled or modified without at least thirty (30) days of advance notice to the Association of cancellation or non-renewal (except for cancellation for non-payment, which shall require ten (10) days of advance notice). Reference is made to Civil Code Section 5800 for further detail regarding statutory minimum requirements for Association officers and directors liability insurance. Such insurance coverage shall also be obtained by the Sub Associations for their directors, officers, committee members and chairpersons.

Coverage described in this Section 9.4 may include one or more of the following extensions: (i) Severability of Interest, (ii) Employment Practices Liability, (iii) Outside Directorship Liability, (iv) Coverage for Failure to Maintain Insurance, (v) Full Prior Acts, (vi) Extended Reporting Period, and (vii) 90 day advance notice of cancellation or non-renewal, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such extensions of coverage.

**Section 9.5** **Fidelity Bond or Insurance.** The Association shall maintain, or be covered by, a fidelity bond or policy of insurance against computer fraud, funds transfer fraud, and dishonest acts on the part of any Persons entrusted with or permitted to handle funds belonging to or administered by the Association including, without limitation, directors, officers and employees as well as any professional manager or management company and its employees. Such fidelity bond or policy of insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection that is equal to or more than the sum of three (3) months' Assessments on all Condominiums in the Development combined with the amount of the Association's reserves. An appropriate endorsement shall be added to such policy or bond, if necessary, to cover any Persons who serve without compensation, including directors, if such policy or bond would not otherwise cover the acts of volunteers. Such fidelity bond or insurance coverage shall also be obtained by the Sub Associations.

**Section 9.6** **Workers' Compensation Insurance.** The Association shall obtain Workers' Compensation Insurance to the extent required to comply with any applicable law. Such insurance shall also be obtained by the Sub Associations, as applicable, unless covered by the Master Association policy(ies).

**Section 9.7** **Earthquake Insurance.** The Association shall obtain earthquake insurance only if at least two-thirds (2/3) of the Owners affirmatively vote to purchase such insurance. If the Owners elect to purchase such earthquake insurance, the insurance may be subsequently cancelled on an affirmative vote of at least two-thirds (2/3) of the Owners. If cancelled, the Association shall make reasonable efforts to notify the Owners of the cancellation.

**Section 9.8** **Insurance Required by Certain Lenders.** Notwithstanding Sections 9.1 through 9.6 or any other provision of this Declaration, in the event the casualty insurance, boiler and machinery insurance, liability insurance and fidelity bond requirements established for condominium

projects by FNMA or FHLMC are greater than the insurance and fidelity bond requirements specified in this Declaration, the FNMA and FHLMC requirements, whichever are greater, shall govern and such insurance or fidelity bond shall be maintained by the Association. This requirement as to FNMA or FHLMC shall be effective so long as FNMA or FHLMC is a Mortgagee, Insurer or Guarantor of a Mortgage or an Owner of a Condominium within the Development; provided, however, to the extent such coverage is not available or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

**Section 9.9 General Policy Provisions; Notice to Owners; Board Authority to Revise Insurance Coverage; Insurance Trustee.**

**(a)** Each of the policies of insurance obtained by the Association pursuant to this Article 9 shall include as named insureds the Association, as trustee for the Owners, the Association's directors and officers, Declarant, and the Owners and their family members, and shall provide that the insurers may not cancel, change or refuse to renew the policies without first giving thirty (30) days' prior written notice to the Association, the Owners and the Mortgagees, except for cancellation for nonpayment of insurance premiums, which shall require ten (10) day's prior written notice to the Association, the Owners and the Mortgagees. Each such policy shall also provide that coverage shall not be prejudiced by any act or neglect of any Condominium Owner except to the extent such prejudice is unavoidably imposed by law or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control. Each such policy shall contain both a full waiver of subrogation by the insurer as to any and all claims against the Association, Declarant, the Owners, Mortgagees and their respective partners, directors, officers, family members, agents, employees and tenants and a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured except to the extent such invalidity is unavoidably imposed by law. Each such policy shall also provide that the coverage provided with respect to any claim shall not be adjusted based on contribution related to insurance policies purchased by any Owner or his Mortgagee.

**(b)** All such policies of insurance and bonds shall be obtained from insurance companies with both a financial rating of Class VII or better and a policyholder's rating of A- or better by Best's insurance rating guide. In the event Best's should revise its rating system, the Association shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by Best's or, in the event Best's discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Board may select.

**(c)** The Association shall provide the Owners with a summary of the Association's property, liability, earthquake, flood, and fidelity insurance policies, as required by Civil Code Sections 5300 and 5810, thirty (30) to ninety (90) days before the end of the Association's fiscal year.

**(d)** Subject to Section 9.8 and any statutory insurance requirements, the Board shall have the authority to deviate from the insurance requirements for the Owners and the Association set forth in this Article IX in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the insurance coverage from the coverage required in this Article IX, the Board shall make reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction in coverage. The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is no longer to obtain one or more of the required insurance coverages to the extent the insurance is no longer available, or if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

(e) The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year, and make such adjustments to the policies as the Board considers it to be in the best interests of the Association. The Board shall have the right to vary from the insurance required by this Declaration in the Board's reasonable discretion, which may include, without limitation, obtaining additional insurance policies or coverages, in higher amounts and/or policy limits.

(f) Subject to the rights of Mortgagees, the proceeds from the Association property insurance policy(ies) shall be payable to the Association or an insurance trustee to be held and expended for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. Such 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.

(g) During the time that Declarant has any ownership interest in the Development or Property, Declarant shall have the right but not the obligation to obtain any additional insurance coverage and additional policy limits that Declarant deems appropriate in its sole discretion, including, without limitation, the same insurance coverages described in this Article 9, but with higher policy limits and amounts of coverage, or additional insurance policy(ies) and coverages not described in this Article 9, with policy limited and amounts of coverage that Declarant deems appropriate in its sole discretion.

**Section 9.10 Unit Owner's Liability, Property, and Automobile Insurance.**

(a) **Liability Insurance**. Each Unit Owner may maintain its own policy or policies of liability insurance against any liability resulting from any injury or damage occurring within the Owner's Unit.

(i) **Residential Unit Owners**. The Association's general liability insurance policy does not provide coverage for liability occurring within the Residential Units. It is recommended that each Residential Unit Owner, at such Owner's sole cost and expense, maintain a general liability insurance policy insuring the Residential Unit Owner against liability for injury to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Residential Unit by such Residential Unit Owner or such Owner's tenant, or their family members, employees, agents, guests or Invitees.

(ii) **Commercial Unit Owners**. Each Commercial Unit Owner shall, at such Owner's sole cost and expense, maintain a general liability insurance policy insuring the Commercial Unit Owner against liability for injury to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Commercial Unit by such Commercial Unit Owner or such Owner's tenant, or their family members, employees, agents, customers, guests or Invitees. Such policy shall have limits of liability of not less than Three Million Dollars ($3,000,000) per occurrence and Five Million Dollars ($5,000,000) general aggregate, and shall include so-called "Dram Shop" or liquor liability coverage (with a minimum amount of One Million Dollars ($1,000,000) liquor liability coverage per occurrence) if the Commercial Unit is used for serving or dispensing alcoholic beverages. If a particular use adopted by a Commercial Unit Owner causes an increase in the cost of the Association's liability policy, the Association may collect the amount of the increase from the applicable Commercial Unit Owner as an Individual Special Assessment.

(b) **Property Insurance**. Each Unit Owner shall obtain and maintain its own policy or policies of property insurance providing coverage against losses to its personal property and any upgrades or improvements to the interior of the Unit added by the Owner after completion of original construction of the Unit. The insurance coverage carried by the Unit Owner shall be for 100% of the

current replacement cost of all improvements in the Owner's Unit not covered by the Association's property insurance policy. The Owner shall not obtain such insurance if the Association's property policy referred to in Section 9.1 will provide coverage for such improvements. The Association may establish Rules as to the reasonable limits of insurance to be carried by Unit Owners and other Occupants after consultation with an insurance consultant. With respect to the Commercial Units, the above-described property insurance to be maintained by the Commercial Unit Owner shall include coverage for the full replacement value of tenant improvements, installation, fixtures and equipment within the Commercial Unit.

**(c)** **Automobile Insurance**. Each Owner that has been assigned a parking license providing the right to have vehicle parked in the garage of the Development shall, at its sole cost and expense, maintain an automobile insurance policy insuring against damage to all vehicles owned or operated by such Owner as well as liability for bodily injury and property damage caused to others arising from such operation, including coverage for owned, hired and non-owned automobiles, with liability limits of not less than that required by law. The Association shall have no liability for any loss or damage caused by the Association or any parking garage operator or valet parking services or its agents to any vehicle located upon or around the Development except to the extent caused by the gross negligence or willful misconduct of the Association or its managing agent.

**(d)** Any insurance maintained by an Owner shall not (i) separately insure any property covered by the Association's insurance policy or policies described in this Article 9, or (ii) invalidate any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable to the Association under the Association's policies that results from the existence of such Owner's insurance policy will be chargeable to the Owner who acquired such Owner's insurance policy. The Association may levy an Individual Special Assessment against the Owner's Condominium to collect the amount of the diminution.

**(e)** Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners (and occupants), the Association, and any First Mortgagee of the Owner's Unit.

**(f)** Each Owner should seek the advice of a qualified insurance consultant regarding personal liability insurance coverage and property insurance coverage appropriate for the Owner, the Owner's personal property and the Owner's Unit, and to ensure compliance with the provisions of this Section 9.10. Such insurance would typically be in the form of a condominium unit owner's policy known as an "HO-6" policy, but may be another form of policy. Each Owner should consult with a qualified insurance consultant regarding the availability of other insurance coverages, endorsements or riders that may be appropriate for the Owner and the Owner's Unit in order to provide desired coverage, including, without limitation (i) all risk endorsement, (ii) loss assessment coverage, (iii) living expense endorsement, (iv) rental coverage endorsement (if applicable), and (v) coverage for the Association master policy deductible.

**(g)** The Association shall have the authority to enforce the Unit Owners' insurance obligations described in this Section 9.10 and require that each Owner maintain all of the required insurance coverages. Notwithstanding the foregoing, the Association and its directors, officers and agents have no duty or obligation to monitor, verify or enforce any Owner's compliance with this Section 9.10.

**(h)** Copies of all insurance policies that an Owner is required to maintain pursuant to this Declaration, or a certificate of such insurance, shall be delivered to the Association upon request. The acceptance of a certificate of insurance by the Association shall not constitute a waiver of any insurance requirements set forth herein.

**Section 9.11 Payment of Premiums.** Insurance premiums for the Association insurance policies required by this Article 9 shall be a Common Expense to be included in the monthly Assessment levied by the Master Association and Sub Associations. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Master Association or Sub Association, as applicable, to be used solely for the payment of the premiums for such policies.

It is the intent of Declarant that all of the rights, duties and obligations of the Association and Board described in Sections 9.12 through 9.18 shall be the rights, duties and obligations of the Master Association only, and not the Sub Associations. Therefore, the Master Association shall have all of the rights, duties and obligations of the Association described in Sections 9.12 through 9.18. References to the "Association" and the "Board" in Sections 9.12 through 9.18 shall mean and refer to the Master Association and its Board, and not the Sub Associations or their Boards.

**Section 9.12 Material Damage or Destruction.** If any portion of the Development is Materially Damaged or destroyed by fire or other casualty, then the following events shall occur:

**(a)** A special Unit Owners meeting shall be held within sixty (60) days of the date of the material damage or destruction. Said Unit Owners meeting shall be called by the Board, the president or any two (2) Unit Owners if the meeting has not been called within fifteen (15) days of the damage or destruction and the Secretary shall give thirty (30) days written notice of the meeting to each Unit Owner and his Mortgagees of record, and notice of said meeting shall be delivered to Declarant. Said Unit Owners meeting shall be held at a suitable location on the Development or as close thereto as practicable which location shall be specified in such notice; Declarant shall be entitled to attend said Unit Owners meeting.

**(b)** The Association shall oversee the repair or reconstruction of the Development in substantial accordance with the latest available construction plans and specifications as hereinafter provided unless in such special Unit Owners meeting at least three-quarters (3/4) of the total voting power of Class A Owners and Class B Owners casts votes against such repair or reconstruction in which event the provisions of Section 9.13 shall immediately become applicable.

**(c)** Unless, in the manner provided above, the requisite number of votes are cast against such repair or reconstruction, all of the insurance proceeds payable on account of such damage or destruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Board. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository and which shall be reasonably acceptable to the Board. The restoration or reconstruction shall be substantially in accordance with the latest available construction plans and specifications for the Development modified as may be required by available materials, state of the art construction and applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by a majority of all Owners; provided, however, any Owner's requested modification to the latest available construction plans and specifications of his Unit shall be approved unless (i) the cost of construction pursuant to the modification exceeds the cost of reconstruction according to the latest available construction plans and specifications, (ii) it affects the Common Area, or (iii) it affects the square footage of, permitted use of, utility service to, easements in favor of or number of Units.

**(d)** The Board shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor") and architect (the "Architect") for the repair or reconstruction contemplated by this Section.

**(e)** The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository upon the receipt of appropriate mechanics lien releases and upon the certification of the Construction Consultant, the General Contractor and the Architect dated not more than ten (10) days prior to any such request for disbursement setting forth the following:

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

**(2)** That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or is justly due to contractors, subcontractors, materialmen, engineers or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, giving a brief description of such services and materials and the principal categories thereof, the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

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

**(4)** That no part of the cost of the services and materials described in Section 9.12(e)(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

**(5)** That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

**(f)** In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, the Association shall first use sums from its accounts and, if necessary, shall levy a Special Assessment on all of the Owners in accordance with Section 4.5 to restore or rebuild the Development.

**(g)** In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, and the sums from the Association's accounts are insufficient to make up the deficiency, and a Special Assessment levied on the Owners in accordance with Section 4.5 is insufficient to make up the deficiency, then the Board may supplement the insurance proceeds and other funds by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

**(h)** All such funds to be supplied by the Association shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section.

**Section 9.13 Owners Vote Not to Rebuild.** Subject to the provisions of Section 8.7 hereof and the rights of Mortgagees thereunder, in the event the Owners vote not to rebuild as described in Section 9.12(b) above, the Association shall, acting as attorney-in-fact for all the Unit Owners, sell the remaining property on terms satisfactory to the Board. The net proceeds of the sale, together with the insurance proceeds, accrued reserves, interest and other funds, shall thereupon be distributed to the Unit Owners according to the following procedure: the Board shall retain, at the Association's expense, an appraiser who is a member of the American Institute of Appraisers or other nationally recognized

appraiser's organization who shall determine the fair market value of each Unit as it existed immediately prior to the damage or destruction and whose determination of value shall be final. The Board shall then distribute to each Unit Owner and such Owner's Mortgagees the following amounts: (a) that percentage of insurance and net sale proceeds equal to such Unit Owner's Unit's fair market value immediately prior to the damage or destruction divided by the total fair market value of all the Units immediately prior to such damage or destruction; and (b) that percentage of accrued reserves, interest and other funds equal to the Annual Assessment against such Unit Owner's Unit divided by the total Annual Assessments against all Units, each as of the most recent Annual Assessment immediately prior to such damage or destruction:

**Section 9.14 Damage or Destruction Not Considered Material.** In the event that any portion of the Development is damaged or destroyed as a result of fire or other casualty but not Materially Damaged as defined herein, then the Development shall be repaired and reconstructed under the oversight of the Board and the Board shall disburse the funds necessary for such repair and reconstruction implementing such procedures as the Board deems appropriate under the circumstances. In the event the insurance proceeds available for such repair or reconstruction are less than the total cost of such repair or reconstruction, the Board shall first use sums from its accounts and, if necessary, shall levy a Special Assessment on all of the Owners in accordance with Section 4.5 to restore or rebuild the Development. In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, and the sums from the Association's accounts are insufficient to make up the deficiency, and a Special Assessment levied on the Owners in accordance with Section 4.5 is insufficient to make up the deficiency, then the Board may supplement the insurance proceeds and other funds by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

**Section 9.15 Substantially Full Insurance Settlement.** Notwithstanding any provision of Section 9.13 to the contrary, if the insurance carrier offers ninety-five percent (95%) or more of the full amount required to repair and restore all the damage, then the Board shall, without a vote of Members, contract to repair or rebuild the damaged portions of the Development in the manner provided in Section 9.12 hereinabove, so long as the deficiency in required funds for repair and restoration is covered by Special Assessments or the Board borrowing on behalf of the Association as described in Section 9.12 above.

**Section 9.16 Emergency Repairs.** In the event of a casualty, there may be a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulations pending settlement of insurance claims and prior to procuring bids for performance of restoration work. As such, without waiting to obtain insurance settlement or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances and the Board may charge the Association's operating accounts for the costs thereof.

**Section 9.17 Notice of Casualty.** Within (60) days after any damage or destruction occurs which invokes the provisions of Sections 9.12 through 9.16, the manager or the Board or, if they do not, any Owner, the insurer, the insurance trustee or any Mortgagee of any such Owner shall record a sworn declaration which shall state that such damage has occurred, shall describe such known damage, shall name any insurer against whom claim is or may be made, shall name each insurance trustee and shall state that such sworn declaration is recorded pursuant to this Section of this Declaration and that a copy of such declaration has been served on each Owner pursuant to the provisions of this Declaration.

**Section 9.18 Condemnation.** In the event of any taking of any Unit, or a part thereof, by eminent domain, the Owner of such Unit shall be entitled to receive the award of such taking after all mortgages and liens on the Unit have been satisfied or otherwise discharged. After acceptance thereof

and if such Owner shall vacate the Unit as a result of such taking, the Owner and his Mortgagees shall be divested of all interest in the Development.

In the event of a taking by eminent domain of the Common Area or more than one Unit, or any parts thereof, at the same time, the Association shall represent the affected Owners in the negotiations and shall propose the method of division of the proceeds of condemnation where the compensation is not apportioned among the affected Owners and their respective Mortgagees by a court judgment or by agreement between the condemning authority and each of the affected Owners. Such compensation available to the affected Owners shall be distributed among the affected Owners and their respective Mortgagees, as their interest may appear, according to the relative fair market value of the Condominiums affected by the condemnation as determined by an independent appraisal conducted by an appraiser who is a member of the American Institute of Appraisers or other nationally-recognized appraiser's organization and whose appraisal shall be final. Said appraiser shall be retained by the Board and paid by the Association.

Upon the taking of any Unit(s) which constitutes less than a total taking of all Units, the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Map (if necessary) and this Declaration to eliminate from the Development the Units so taken and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Units in the Development and all Owners of the remaining Units shall convey to each remaining Owner an equal proportionate share of the undivided interests in the Common Area.

## ARTICLE 10
## DISPUTE RESOLUTION PROVISIONS

It is the intent of Declarant that all of the rights, duties and obligations of the Association and Board described in this Article 10 shall be the rights, duties and obligations of the Master Association only, and not the Sub Associations. Therefore, the Master Association shall have all of the rights, duties and obligations of the Association described in this Article 10. References to the "Association" and the "Board" in this Article 10 shall mean and refer to the Master Association and its Board, and not the Sub Associations or their Boards.

### Section 10.1 Enforcement of CC&Rs and Dispute Resolution.

**(a)** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration together with any amendments hereto or to the Articles, Bylaws or other Governing Document(s) and in such action shall be entitled to recover damages and/or injunctive relief as well as reasonable attorney's fees as may be ordered by the Court. The Association shall have the exclusive right of enforcement of provisions of the Governing Documents relating to architectural control and the Association Rules, unless the Association is unwilling or unable to cause such enforcement, in which case any Owner who otherwise has standing shall have the right, after notice to the Association, to undertake such enforcement. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**(b)** The Board may perform any act reasonably necessary to resolve any civil claim or action through alternate dispute resolution proceedings such as conciliation, mediation, binding arbitration, or non-binding arbitration.

**(c)** Any arbitration pursuant to Sections 10.1 or 10.2 will be conducted in accordance with the following rules and procedures:

**(1)** If the Declarant is a party, the Declarant shall advance the fees necessary to initiate the arbitration, with the costs and fees, including ongoing costs and fees to be paid as agreed by the parties and if they cannot agree as determined by the arbitrator(s) with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s).

**(2)** The arbitration shall be administered by a neutral and impartial person(s).

**(3)** A neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), and the arbitrator(s) to be appointed within a specified period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124 of the Code of Civil Procedure.

**(4)** Venue of the arbitration shall be in the county where the Development is located unless the parties agree to some other location.

**(5)** The arbitration shall be promptly and timely commenced in accordance with (i) the rules of the arbitration, or if the rules don't specify a date by which the arbitration must commence, then (ii) a date as agreed to by the parties, and if they cannot agree, (iii) a date determined by the arbitrator(s).

**(6)** The arbitration shall be conducted in accordance with the rules and procedures of the JAMS Streamlined Arbitration Rules and Procedures.

(7) The arbitration shall be prompt and timely concluded.

**(8)** The arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause.

**Section 10.2 Pre-Litigation Requirements; Claims for Declaratory Relief or Enforcement of Governing Documents**. Prior to initiating the prosecution of a civil action by the Association against any Owner(s) or by an Owner against the Association or any other Owner(s), the parties shall be subject to the following requirements in subsections (a) and (b) below.

**(d)** With respect to any internal dispute between the Association and an Owner involving their rights, duties, or liabilities under the Davis Stirling Act, under the Nonprofit Mutual Benefit Corporation Law, or under this Declaration or the Governing Documents, the Board shall develop fair, reasonable, and expeditious dispute resolution procedures in accordance with the requirements of Civil Code Sections 5900-5920 (or defer to the default procedures in Section 5915). The parties to such a dispute shall comply with the meet and confer requirements set forth in Sections 5900-5920 of the Civil Code, including any procedures developed by the Association as described above. The dispute resolution procedures described Civil Code Sections 5900-5920 are intended to provide a simple and efficient intra-association dispute resolution method, and shall be undertaken in good faith by the parties to any such dispute.

**(b)** With respect to an action solely for declaratory, injunctive or writ relief to enforce the Governing Documents, the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation

Law, or for declaratory relief or injunctive relief to enforce the same in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000), the Board or the Unit Owner, as applicable shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 5930 of the Civil Code. This obligation shall not apply to actions in small claims court.

**(c)** As required by Civil Code Section 5965, Unit Owners shall annually be provided with a summary of the provisions of Sections 5925-5960 of the Civil Code, which shall specifically reference Section 5930, and shall include the following language:

> "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the governing documents or the applicable law."

The summary shall be provided either at the time the pro forma budget is prepared and distributed pursuant Section 5310. The summary shall include a description of the Association internal dispute resolution process, as required by Section 5920 of the Civil Code.

**Section 10.3 Required Actions Prior to Certain Legal Actions or Proceedings.**

**(a)** Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Section 10.3, the Board shall not cause nor permit the Association to institute any significant legal action or proceeding, including any mediation, arbitration or judicial reference proceeding, against Declarant or any person without providing the Owners with at least thirty (30) days' prior written notice of the Association's intention to institute such legal action or proceeding, including any "Calderon Notice" or any other notice intended to notify Declarant of a potential claim or legal proceeding. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or annual assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is being prosecuted. For purposes of this Section 10.3, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

**(1)** The levy of a special assessment to fund all or any portion of the action or proceeding;

**(2)** The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;

**(3)** The amount of the claim is in excess of twenty-five thousand dollars ($25,000); or

**(4)** A material adverse effect on the ability to sell and/or refinance the Condominiums within the Development during the period the action or proceeding is being prosecuted.

Notwithstanding subsection (a) above, if the Board in good faith determines that there is insufficient time to provide prior notice to the Owners as required in this Section 10.3 before the expiration of any applicable statute of limitations or before the loss of any other significant right of the

Association, 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 in this provision.

**(b)** Pursuant to Civil Code Section 6150, not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damages to the Units that arise out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the membership records when the notice is provided. This notice shall specify the following:

**(1)** That a meeting will take place to discuss problems that may lead to the filing of a civil action.

**(2)** The options, including civil actions that are available to address the problems.

**(3)** The time and place of the meeting.

Notwithstanding subsection (b) above, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Board may give the notice, as described above, within thirty (30) days after the filing of the action.

**(c)** Notwithstanding anything to the contrary in this Declaration, the Board shall not cause nor permit the Association to institute any significant legal proceeding, including without limitation any civil action, mediation, arbitration, or judicial reference proceeding against Declarant without first obtaining the affirmative vote of Members representing no less than a majority of the total voting power of all of the Members of the Association, excluding Declarant; provided that the vote of the Members is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws related to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws. Notwithstanding the foregoing, the reference to any procedures in this Section 10.3 shall not provide the Owners or the Association with any rights or remedies not otherwise available to them.

**Section 10.4 Title 7 Master Declaration; Disputes Involving Declarant; Design or Construction Defect Claims**.

**(a)** **Title 7 Master Declaration**. Disputes covered by the Title 7 Master Declaration shall be resolved in accordance with the terms, conditions and procedures set forth in the Title 7 Master Declaration.

**(b)** **Disputes Involving Declarant**. Notwithstanding any other provision in this Declaration, but except as may otherwise be provided in the Title 7 Master Declaration, any disputes, claims, issues or controversies between any Owner and Declarant or between the Association and Declarant regarding any matters that arise from or are in any way related to the Development, the relationship between an Owner and Declarant or the relationship between the Association and Declarant, whether contractual or tort, including but not limited to the purchase, sale, condition, design, construction, installation or materials used in the construction of any Unit or any portion of the Development, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, shall

be resolved in accordance with the terms, conditions and procedures set forth in the Title 7 Master Declaration. Only the Master Association, and not the Sub Associations, shall have the authority to initiate any construction defect claim(s), action(s) or legal proceeding(s), any related claim(s), action(s) or legal proceeding(s), or any other claim(s), action(s) or legal proceeding(s) to pursuant to Title 7 or the Title 7 Master Declaration.

(c) **Design or Construction Defect Claims.** Any action or legal proceeding by the Association or any Owner against Declarant, or against any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant, for the design and/or construction of the Development, or any element thereof, which action or legal proceeding pertains to any dispute, claim, issue or controversy (each, a "Dispute") relating to or based upon a claim for defects or negligence in the design or construction of improvements within the Development, shall be resolved according to the dispute resolution procedures contained in the Title 7 Master Declaration referenced in Section 1.1 of this Declaration. Notwithstanding anything in this Declaration or in the Title 7 Master Declaration to the contrary, in order to facilitate the resolution of any such Dispute in the best interests of the Association, at least one member of the Board with the authority to settle the Dispute shall be required to be in attendance at all times and shall have the obligation to participate in any meeting, conference, proceeding, hearing or other similar situation in which settlement discussions may occur concerning a "Dispute" described above. Only the Master Association, and not the Sub Associations, shall have the authority to initiate any construction defect claim(s), action(s) or legal proceeding(s), any related claim(s), action(s) or legal proceeding(s), or any other claim(s), action(s) or legal proceeding(s) to pursuant to Title 7 or the Title 7 Master Declaration.

**(d)** The provisions of this Section 10.4 are in addition to, and not in place of, the requirements of Section 10.3. Further, for actions and legal proceedings subject to this Section 10.4, any and all notices under Section 10.3 shall also include a list of any and all defect and design claims being brought and an estimate of repair costs. The provisions of this Section 10.4 shall not be amended without the prior written consent of Declarant.

**Section 10.5 Notice of Right to Repair Law; Title 7.** The Association and Owners are hereby advised of the existence of the procedures codified at Title 7 of Part 2 of Division 2 of the California Civil Code (Section 895 et seq.)(the "Right to Repair Law"), which became effective on January 1, 2003. These procedures impact the legal rights of the Owners and the Association with respect to design and construction defect disputes and related claims involving Declarant.

**Section 10.6 Subsequent Purchasers of Units.** Pursuant to Civil Code Section 912(h), each Owner is hereby notified that each Owner is obligated to provide any subsequent purchasers of that Owner's Unit with copies of documents provided by Declarant to that Owner before the Close of Escrow of that Owner's Unit. These documents include, but are not limited to, (i) the Title 7 Master Declaration, (ii) any manufacturer's warranty information, (iii) any homeowner guide or applicable maintenance manual, (iv) any disclosures and supplemental disclosures, and (v) any other documents provided in conjunction with the original sale of the Condominium Unit by the Declarant. Each Owner shall maintain full and complete copies of all of the documents described above, and shall provide copies of said documents to any subsequent purchasers of Buyer's Unit. In accepting title to a Unit, subsequent purchasers are bound, and deemed to have agreed to be bound, by any and all such documents. Each Owner is obligated to provide to Declarant promptly at the time of the sale with the names of any subsequent purchaser of the Unit from Buyer for a period of ten (10) years from the date of the original close of escrow for such Owner's Unit.

## ARTICLE 11
## GENERAL PROVISIONS

**Section 11.1** **Severability.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where the Development is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**Section 11.2** **Term.** The covenants and restrictions of this Declaration shall run with and bind the Development and shall inure to the benefit of and shall be enforceable by the Master Association, Sub Associations or any Owner and their respective legal representatives, heirs, successors and assigns for a term of sixty (60) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of the voting power of the Master Association elects otherwise.

**Section 11.3** **Amendments.**

**(a)** **Amendment by Declarant.**

**(i)** Notwithstanding any other provisions of this Section 11.3, at any time prior to the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

**(ii)** Notwithstanding any other provisions of this Section 11.3, Declarant (for so long as Declarant owns any portion of the Development) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of the Department of Real Estate or VA, FHA, Fannie Mae, Ginnie Mae, Freddie Mac, or other lender; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Development that have not been conveyed to the Master Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Master Association, Sub Associations or Owners arising under Division 2, Part 2, Title 7 of the California Civil Code (Section 895 et seq.); and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

**(iii)** Declarant shall have the right to amend the Map and Condominium Plan to reflect as-built conditions and/or to correct typographical, engineering or other errors in any previously recorded Condominium Plan, and such amendment, notwithstanding the provisions of Civil Code Section 4295, shall not require the consent of any Owner or Mortgagee.

**(b)** After the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, and during such time as there is both Class A and Class B voting membership in the Master Association, this Declaration may be amended only by the affirmative vote or written consent of at least a majority of each class of membership and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration if approval of First Mortgagees is required pursuant to Article 8. With respect the Class A membership (but not the Class B membership), approval of an amendment by the Class A Members as described in the preceding sentence shall require the affirmative vote or written consent of at least a majority of the Class A Members

representing (i) the voting power of the Members representing the Owners of the Market-Rate Units and (ii) the voting power of the Members representing Owners of the Below Market Rate Units.

**(c)** After the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, and after the conversion of Class B memberships into Class A memberships as provided in Section 3.6, this Declaration may be amended only by the affirmative vote or written consent of (i) at least a majority of the voting power of the voting Members of the Master Association and (ii) at least a majority of the total voting power of the voting Members other than Declarant, and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration if approval of First Mortgagees is required pursuant to Article 8. Approval of an amendment by the Members as described in the preceding sentence shall require the affirmative vote or written consent of at least a majority of (i) the voting power of the Members representing the Owners of the Market-Rate Units and (ii) the voting power of the Members representing Owners of the Below Market Rate Units.

**(d)** Except for an amendment that may be unilaterally completed by Declarant as provided in Section 11.3(a): (i) a proposed amendment shall be distributed to all Unit Owners by first-class mail, personal delivery, electronic delivery (when agreed to in advance) or as otherwise permitted by Civil Code Sections 4040 through 4055 (as applicable), not less than thirty (30) days prior to the deadline for voting on the amendment by the Members of the Master Association, (ii) any such amendment shall be evidenced by an instrument executed and acknowledged by the President, Secretary or other duly authorized officer of the Master Association, shall make appropriate reference to this Declaration and its amendments and shall be recorded in the Official Records of the Recorder of the City and County of San Francisco, and (iii) any such voting of the Unit Owners regarding amendment of this Declaration shall comply with the applicable procedures in Civil Code Sections 5100-5130.

**(e)** A copy of an amendment adopted by the Members of the Master Association or completed by Declarant shall be delivered to the Unit Owners by first-class mail or personal delivery, or electronic delivery when agreed to in advance, within a reasonable period after its recordation.

**(f)** Notwithstanding the above in this Section 11.3: (i) the percentage of the voting power of the voting Members of the Master Association or of voting Members other than Declarant necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under such clause or provision, (ii) the Board shall have the power to amend this Declaration without an Master Association vote if the amendment is technical in nature or to make necessary factual corrections or changes required by law, (iii) any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not any other Owner shall not be amended or rescinded without the prior written consent of Declarant until all of the Condominiums in the Development have been conveyed to an Owner pursuant to a Public Report and Declarant no longer owns any Condominiums in the Development, and (iv) the provisions of Section 10.3 (Required Actions Prior to Certain Legal Actions or Proceedings), Section 10.4 (Title 7 Master Declaration; Disputes Involving Declarant; Design or Construction Defect Claims) and Section 11.4 (Limitation of Restrictions on Declarant) shall not be amended without the prior written approval of Declarant.

**(g)** **Amendments Affecting the Commercial Units.** Notwithstanding anything to the contrary in this Section 11.3, and notwithstanding anything to the contrary in this Declaration or the Governing Documents, any amendment to this Declaration or the Governing Documents that would (i) materially affect the permitted use of a Commercial Unit, portion thereof or Exclusive Use Common Area appurtenant thereto, or (ii) otherwise materially affect any provision of this Declaration or the Governing Documents that specifically confers easement(s), obligations, rights, or other benefits on the Commercial

Unit Owner(s) and not any other Owner, shall not be amended or rescinded without the prior written consent of the affected Commercial Unit Owner(s). Without limiting the generality of the foregoing, Sections 2.14, 3.6(g), 3.9(b), 6.3(a), 6.9, 6.10, 7.2 (including all subsections), 7.4(j) (language pertaining to Commercial Units), 7.27(o), and this paragraph shall not be amended or rescinded without the prior written consent of the Commercial Unit Owner(s) so affected.

**(h) Amendment of the Condominium Plan.** The Condominium Plan for the Development may be amended in compliance with Civil Code Section 4295, as such Civil Code Section may be amended. The Condominium Plan may be amended separately from this Declaration, in compliance Civil Code Section 4295. Conversion of Common Area into Exclusive Use Common Area without amendment of the Condominium Plan may be accomplished by the consent of Members holding a majority of the total voting power of the Master Association pursuant to Civil Code Section 4600, provided that any measure placed before the Unit Owners requesting that the Board of directors grant exclusive use of any portion of the Common Area shall specify whether the Master Association will receive any monetary consideration for the grant and whether the Master Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area. The authorization of an encroachment into Common Area or the designation of Common Area as Exclusive Use Common Area under the provisions of Section 3.11 shall not be considered a conversion of Common Area into Common Area for purposes of this Section 11.3

**Section 11.4 Limitations of Restrictions on Declarant; Development Rights; Title Rights.** Declarant is or may be undertaking the work of developing Condominiums and other improvements within the Development, which work may also include work on existing buildings and appurtenances within the Development. The completion of that work and the marketing, sale, rental or other disposal of the Condominiums is essential to the establishment and welfare of the Development as a condominium community. In order that said work may be accomplished and the Development be established as a fully occupied condominium community as rapidly as possible, and for a period of time terminating upon sale and close of escrow of the final Condominium Unit in the Development and Property owned by Declarant, nothing in this Declaration shall be understood or construed to:

**(e)** Prevent Declarant or Declarant's contractors or subcontractors from performing on the Development or in any Unit whatever is reasonably necessary or advisable in connection with the completion of said work, including, without limitation, causing noise, dirt dust, odors, smells or other disturbances; in connection with any work, construction on any portion of the Property.

**(f)** Prevent Declarant or Declarant's contractors or subcontractors from using the driveways or entranceways from the public street, sidewalk, pathway, corridor or walkway to the Development in connection with the completion of any work on the Property.

**(g)** Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Development such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing said Development as a community and disposing of the Condominiums by sale, lease or otherwise;

**(h)** Prevent Declarant from conducting on any part of the Development its business of completing said work and of establishing a plan of condominium ownership and of disposing of said Development by sale or leasing of Condominiums or otherwise, including use of a Unit, multiple Units or Residential Facilities or amenity areas, roof areas, lobbies, or other portion of the Common Area as a sales or leasing office or other buyer or resident service purpose;

**(i)** Prevent Declarant from sales and marketing activities as may be deemed necessary by Declarant for the marketing of the Condominiums for sale or leasing, including, without limitation, tours of the Common Area and unoccupied Units by potential buyers, lessees and their agents;

**(j)** Prevent Declarant from maintaining such sign or signs on any part of the Development as may be necessary for the sales, marketing, leasing, or disposition of the Development by sale or leasing of Condominiums or otherwise;

**(k)** Subject Declarant to the Architectural Control provisions of this Declaration for the construction of any Condominium or other improvement on the Development;

**(l)** Prevent Declarant from changing the exterior appearance of Common Areas structures, landscaping or any other matter directly or indirectly connected with the Development in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law;

**(i)** Declarant and Declarant's successors and assigns may use any portion of the Common Area and/or a Unit(s) owned by Declarant for a model Unit, design center, customer service center or display and sales or leasing office which promotes the Development until the last unit is sold or leased;

**(j)** Subject to the foregoing, so long as Declarant or Declarant's successors and assigns owns one or more of the Condominiums established and described herein, Declarant and its successors and assigns shall otherwise be subject to the provisions of this Declaration. The provisions of this Section 11.4 may not be amended without the consent of Declarant until three (3) years after all of the Condominiums in the Development owned by Declarant have been conveyed to an unrelated third party;

**(k)** **Title Rights**. This Declaration shall not be construed to impose any obligation on Declarant or any other person or entity to improve or develop any portion of the Property. The rights of Declarant may be assigned to any successor(s) by an express assignment in a recorded instrument, including, without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations, easements and rights of way to itself, utility companies, to government agencies, or to others as may be reasonably necessary to the proper development, marketing, sale, leasing and disposal of property owned by Declarant; and/or

**(l)** **Supplementary Declaration**. So long as Declarant owns any portion of the Property, a Supplementary Declaration may be recorded by Declarant without the consent of the Master Association, Sub Associations or any Owner, for any of the purposes for which a Supplementary Declaration may be recorded as provided herein this Declaration.

**Section 11.5** **Termination of any Responsibility of Declarant.** In the event Declarant conveys its rights, title and interest in and to the Development to any individual, partnership, limited liability company, corporation or other legal entity and causes a "Notice of Substitution of Declarant" setting forth the name and business address of such individual, partnership, limited liability company, corporation or other legal entity and a reference to this Declaration to be recorded in the Official Records of the City and County of San Francisco, Declarant shall be relieved of any further duty or obligation hereunder and such individual, partnership, limited liability company, corporation or other legal entity shall accept all such duties and obligations of Declarant on and after the date of recordation of such "Notice of Substitution of Declarant" and shall be entitled to exercise the rights available to Declarant hereunder. For the avoidance of doubt, in the event of a Foreclosure of the ULLICO Mortgage, ULLICO

shall have the right to cause such "Notice of Substitution of Declarant" to be recorded in the Official Records of the City and County of San Francisco.

**Section 11.6** **Enforcement of Obligation to Complete Improvements.** In the event that the Common Area of the Development has not been completed prior to the issuance of a final subdivision public report by the DRE, then Declarant shall enter into written agreements satisfactory to the DRE to secure the completion of such improvements. The Board shall consider and vote upon action by the Master Association to enforce the rights provided to the Master Association by such agreements if, within sixty (60) days after the completion date specified for a particular improvement by such agreement, no notice of completion as to such improvement has been filed and such improvement is not complete. If the Master Association has given an extension in writing for the completion of any Common Area, the Board shall consider and vote upon action if a notice of completion has not been filed within thirty (30) days after the expiration of such extension.

A special meeting of the Members of the Master Association, for the purpose of voting to override a decision by the Board not to initiate action to enforce the rights of the Master Association under the aforementioned agreements or on the failure of the Board to consider and vote upon action, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after the receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of voting Members of the Master Association. At such special meeting, a vote of a majority of the Members of the Master Association other than the Declarant shall be required to take action to enforce the rights of the Master Association under such agreements and such vote shall be deemed to be the decision of the Master Association. The Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Master Association.

**Section 11.7** **Inspection of Improvements and Release of Completion Arrangements.** The Board shall, within thirty (30) days of Declarant's providing the Board with a copy of the recorded notice of completion with respect to the improvements referred to in Section 11.6 above or otherwise notifying the Board that the improvements are complete, cause such improvements to be inspected in the manner determined by the Board to be appropriate under the circumstances. The Board shall notify Declarant within thirty (30) days of Declarant's notice whether such improvements have been satisfactorily completed or if the Board's position is that there are remaining items to be constructed or repaired. If (a) either the Board confirms that such improvements are complete, or the Board fails to notify Declarant of any remaining items to be constructed or repaired, and (b) either (i) the statutory period for recording mechanics' liens has expired, or (ii) the Master Association has been provided with a title policy or endorsement, as applicable, with coverage in an amount not less than the cost of the improvements, insuring that the improvements are free of liens and claims, then Declarant shall be entitled to the release of any bonds, letters of credit or other security held by the Master Association with respect to such improvements, and the Board shall cooperate with Declarant respect to such release.

**Section 11.8** **Owner's Compliance.** Each Owner of a Condominium and/or occupant of a Unit shall comply with the provisions of the Governing Documents and the decisions and resolutions of the Master Association, Sub Associations or their duly authorized representatives as such may be lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for action to recover sums due for damages or for injunctive relief. All arrangements and determinations lawfully made by the Master Association or Sub Associations in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Owners of Condominiums and their successors and assigns

**Section 11.9** **Joint and Severable Liability**. When the Owner of a Unit is comprised or more than one person, each such person shall be jointly and severally liable for payment of Assessments, and

the performance of all obligations arising under any provision of the Governing Documents with respect to such Unit or the ownership thereof.

**Section 11.10 Conflict.** In the case of any conflict or inconsistencies between the Articles and Bylaws and this Declaration, this Declaration shall control.

**Section 11.11 Use of Words.** Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns have been used herein in their generic sense as a reference to all Persons without regard to sex. The use of the word "including" does not limit the possible examples of the matter discussed.

**Section 11.12 Statutory References.** All references in this Declaration to particular statutes or codes are references to the laws of the State of California or United States and should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made. If a statute is repealed and no replacement statute applies, then the requirement of the prior statute shall apply unless amended by the Master Association.

**Section 11.13 Notices.** Any notice permitted or required by this Declaration, the Articles or the Bylaws may be delivered by either personally or by mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable. If delivered by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Person at the current address given by such Person to the Secretary of the Master Association or addressed to the Unit of such Person if no address has been given to the Secretary.

**Section 11.14 Exhibits.** All exhibits referred to herein and attached to this Declaration are incorporated herein by reference.

**Section 11.15 No Discrimination.** Notwithstanding anything that may be stated herein, no provision of this Declaration shall purport to restrict or abridge, directly or indirectly, the right of an Owner to sell or lease his Condominium because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, family status, or other limitation prohibited by law, of a proposed or actual buyer or occupant.

**Section 11.16 Power of Attorney.**

**(a)** Each of the Owners irrevocably appoints the Master Association as attorney-in-fact and irrevocably grants to the Master Association full power in the name and stead of such Owner to sell the entire Development and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code Section 4610 and under the circumstances authorizing partition under this Declaration. This power of attorney shall (i) be binding on all Unit Owners whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Master Association subject to obtaining the prior approval by vote or written consent of sixty-seven percent (67%) of all Mortgagees of First Mortgages; and (iii) be exercisable only after recordation in the Official Records of the Recorder of the City and County of San Francisco of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any Person relying on in it good faith.

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

**Section 11.17 Special Tax Assessment; Mello-Roos Community Facilities District; Community Benefit District.** The Development may lie within the boundaries of a special tax assessment district, Mello-Roos Community Facilities District and a Community Benefit District that require the levy of special taxes or assessments for repayment of bonds issued for the purpose of paying the cost of services or capital improvements, or for payment of community facilities or benefits. Unit Owner's and/or the Master Association may be required to pay such special taxes and assessments. The amount of the special taxes, assessments and any other information pertaining to any such district(s) can be obtained from the San Francisco Assessor's Office.

**Section 11.18 Limit of Liability of Declarant Parties.** To the greatest extent allowed by law, the liability of Declarant for Declarant's obligations under this Declaration (or any amendments or supplements thereto) shall be limited to Declarant's interest in the Property, and no Owner, Occupant, Master Association or Sub Association shall look to any other property or assets of Declarant, or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, agent or affiliate of Declarant (collectively, the "Declarant Parties") in seeking either to enforce Declarant's obligations under this Declaration (or any amendments or supplements thereto) to satisfy a judgment for Declarant's failure to perform such obligations; and none of the Declarant Parties shall be personally liable for the performance of Declarant's obligations under this Declaration (or any amendments or supplements thereto).

**[balance of page intentionally left blank - signature(s) on following page**

IN WITNESS WHEREOF, **the undersigned, being the Declarant herein, has issued this Declaration as of the day and year written below.**

Date: 2/6/2020

BLOCK ONE PROPERTY HOLDER, L.P.,
a Delaware limited partnership

By: BLOCK ONE PROPERTY HOLDER GP, L.L.C.,
a Delaware limited liability company
Its: General Partner

By: _____

Name: Authorized Signatory
Carl D. Shannon

Its: _____

## NOTARY ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California ) SS
COUNTY OF San Francisco )

On February 6, 2020

before me, Betty M. Dankas, a Notary Public, personally appeared

Carl Shannon

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 of Notary Public

BETTY M. DANKAS
Notary Public - California
San Francisco County
Commission # 2313064
My Comm. Expires Dec 18, 2023

(Notary Seal)

**EXHIBIT A**

Legal Description of Property

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

All that certain real property described on that certain subdivision map entitled "Final Map 9675", recorded on November 21, 2019, in Condominium Map Book 137, at Pages 70 through 73, inclusive, in the Official Records of the City and County of San Francisco, State of California.

APN: 3740-035

Formerly APNs: 3740-027; 029; 030; 031; 032

**EXHIBIT B**
**PERCENTAGES FOR PRORATION OF VARIABLE ASSESSMENTS**
**(See Section 4.8 of the Declaration)**

# MIRA I SUB ASSOCIATION
## Percentages for Allocation of Variable Expenses

*Note:*

***Percent of Variable Expense for the MIRA Master Association Residential Budget and the MIRA Master Association General Budget is calculated as follows for each unit: Total SF = 429,342 sf***

***Unit SF Per Assessment Group/429,342 sf = Residential Variable Expense per Unit****

***Unit SF Per Assessment Group/439,499 sf = General Variable Expense Per Unit*****

| | Assessment Group | Percent of Variable Expense: MIRA I Sub Association | Master Residential Budget* | Master General Budget** |
|---|---|---|---|---|
| **Tower Units** | | | | |
| L40 | | | | |
| T-03 | 17 | 0.770% | 0.551% | 0.538% |
| T-04 | 18 | 0.797% | 0.570% | 0.557% |
| T-05 | 15 | 0.704% | 0.504% | 0.492% |
| T-06 | 14 | 0.667% | 0.477% | 0.466% |
| L39 | | | | |
| T-03 | 17 | 0.770% | 0.551% | 0.538% |
| T-04 | 18 | 0.797% | 0.570% | 0.557% |
| T-05 | 16 | 0.721% | 0.516% | 0.504% |
| T-06 | 14 | 0.667% | 0.477% | 0.466% |
| L38 | | | | |
| T-03 | 17 | 0.770% | 0.551% | 0.538% |
| T-04 | 18 | 0.797% | 0.570% | 0.557% |
| T-05 | 16 | 0.721% | 0.516% | 0.504% |
| T-06 | 15 | 0.704% | 0.504% | 0.492% |
| L37 | | | | |
| T-03 | 17 | 0.770% | 0.551% | 0.538% |
| T-04 | 17 | 0.770% | 0.551% | 0.538% |
| T-05 | 15 | 0.704% | 0.504% | 0.492% |
| T-06 | 15 | 0.704% | 0.504% | 0.492% |
| L36 | | | | |
| T-03 | 17 | 0.770% | 0.551% | 0.538% |
| T-04 | 17 | 0.770% | 0.551% | 0.538% |
| T-05 | 15 | 0.704% | 0.504% | 0.492% |
| T-06 | 15 | 0.704% | 0.504% | 0.492% |

| | | | | | |
|---|---|---|---|---|---|
| L35 | | | | | |
| | TYPE T-08 | 12 | 0.565% | 0.404% | 0.395% |
| | TYPE T-09 | 13 | 0.647% | 0.462% | 0.452% |
| | TYPE T-10 | 15 | 0.704% | 0.504% | 0.492% |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-15 | 3 | 0.268% | 0.191% | 0.187% |
| L34 | | | | | |
| | TYPE T-08 | 12 | 0.565% | 0.404% | 0.395% |
| | TYPE T-09 | 14 | 0.667% | 0.477% | 0.466% |
| | TYPE T-10 | 15 | 0.704% | 0.504% | 0.492% |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-15 | 3 | 0.268% | 0.191% | 0.187% |
| L33 | | | | | |
| | TYPE T-08 | 12 | 0.565% | 0.404% | 0.395% |
| | TYPE T-09 | 14 | 0.667% | 0.477% | 0.466% |
| | TYPE T-10 | 15 | 0.704% | 0.504% | 0.492% |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-15 | 3 | 0.268% | 0.191% | 0.187% |
| L32 | | | | | |
| | TYPE T-08 | 11 | 0.549% | 0.392% | 0.383% |
| | TYPE T-9 | 13 | 0.647% | 0.462% | 0.452% |
| | TYPE T-10 | 15 | 0.704% | 0.504% | 0.492% |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-15 | 3 | 0.268% | 0.191% | 0.187% |
| L31 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-13 MR | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L30 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-13 MR | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |

| | | | | | |
|---|---|---|---|---|---|
| L29 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-13 MR | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L28 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-13 MR | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L27 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-13 MR | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L26 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L25 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L24 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |

| | | | | | |
|---|---|---|---|---|---|
| L23 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| L22 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L21 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L20 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L19 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L18 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L17 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |

| | | | | | |
|---|---|---|---|---|---|
| L16 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L15 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| L14 | | | | | |
| | TYPE T-11 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| L12 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| L11 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-15 MR | 2 | 0.258% | 0.184% | 0.180% |
| L10 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-14 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-15 MR | 3 | 0.268% | 0.191% | 0.187% |
| L09 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 NW | 10 | 0.501% | 0.358% | 0.350% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-14 | 10 | 0.501% | 0.358% | 0.350% |

| | | | | | |
|---|---|---|---|---|---|
| L08 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-16 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-17 | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-18 | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-19 | 8 | 0.438% | 0.313% | 0.306% |
| L07 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 SE | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-16 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-18 | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-19 | 8 | 0.438% | 0.313% | 0.306% |
| L06 | | | | | |
| | TYPE T-11 | 5 | 0.346% | 0.248% | 0.242% |
| | TYPE T-12 SE | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-12 SW | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-16 | 9 | 0.477% | 0.341% | 0.333% |
| | TYPE T-18 | 8 | 0.438% | 0.313% | 0.306% |
| | TYPE T-19 | 9 | 0.477% | 0.341% | 0.333% |
| L05 | | | | | |
| | TYPE T-22 | 4 | 0.309% | 0.221% | 0.216% |
| | TYPE T-24 | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-25 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-27 | 4 | 0.309% | 0.221% | 0.216% |
| | TYPE T-30 | 4 | 0.309% | 0.221% | 0.216% |
| L04 | | | | | |
| | TYPE T-20 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-21 | 7 | 0.408% | 0.291% | 0.285% |
| | TYPE T-22 | 4 | 0.309% | 0.221% | 0.216% |
| | TYPE T-24 | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-25 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-27 | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-30 | 4 | 0.309% | 0.221% | 0.216% |
| L03 | | | | | |
| | TYPE T-20 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-22 | 4 | 0.309% | 0.221% | 0.216% |
| | TYPE T-24 | 2 | 0.258% | 0.184% | 0.180% |
| | TYPE T-25 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-27 | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE T-30 | 4 | 0.309% | 0.221% | 0.216% |
| L02 | | | | | |
| | TYPE T-20 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE T-22 | 4 | 0.309% | 0.221% | 0.216% |
| | TYPE T-24 | 2 | 0.258% | 0.184% | 0.180% |
| | TYPE T-25 | 6 | 0.369% | 0.264% | 0.258% |
| | TYPE T-27 | 3 | 0.268% | 0.191% | 0.187% |

| | | | | | |
|---|---|---|---|---|---|
| | TYPE T-30 | 4 | 0.309% | 0.221% | 0.216% |
| **Townhome Units** | | | | | |
| L04 | | | | | |
| | TYPE TH-1 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE TH-2 | 1 | 0.217% | 0.155% | 0.151% |
| L03 | | | | | |
| | TYPE TH-1 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE TH-2 | 1 | 0.217% | 0.155% | 0.151% |
| L02 | | | | | |
| | TYPE TH-1 | 1 | 0.217% | 0.155% | 0.151% |
| | TYPE TH-3 | 3 | 0.268% | 0.191% | 0.187% |
| L01 | | | | | |
| | TYPE TH-4 | 3 | 0.268% | 0.191% | 0.187% |
| | TYPE TH-5 | 4 | 0.309% | 0.221% | 0.216% |
| | **Totals** | | **100.000%** | **71.489%** | **69.837%** |

# MIRA II Sub Association
# Percentages for Allocation of Variable Expenses

*Note:*

***Percent of Variable Expense for the MIRA Master Association Residential Budget and the MIRA Master Association General Budget is calculated as follows for each unit: Total SF = 429,342 sf***

***Unit SF Per Assessment Group/429,342 sf = Residential % Variable Expense per Unit****

***Unit SF Per Assessment Group/439,499 sf = General % Variable Expense per Unit*****

| | | | Percent of Variable Expense | | |
|---|---|---|---|---|---|
| | **Units** | **Assessment Group** | **MIRA Sub II** | **MIRA Master Residential*** | **MIRA Master General**** |
| **Tower Units** | | | | | |
| L26 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L25 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L24 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L23 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L22 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L21 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L20 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |

| | | | | | |
|---|---|---|---|---|---|
| L19 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L18 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L17 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L16 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L15 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L14 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L12 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L11 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L10 | | | | | |
| | TYPE T-13 BMR | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L09 | | | | | |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L08 | | | | | |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| L07 | | | | | |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-17 | 8 | 1.120% | 0.319% | 0.312% |
| L06 | | | | | |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-15 BMR | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-17 | 8 | 1.120% | 0.319% | 0.312% |

| | | | | | |
|---|---|---|---|---|---|
| L05 | | | | | |
| | TYPE T-21 | 7 | 0.990% | 0.282% | 0.276% |
| | TYPE T-23 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-26 | 4 | 0.761% | 0.217% | 0.212% |
| | TYPE T-28 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE T-29 | 3 | 0.680% | 0.194% | 0.189% |
| L04 | | | | | |
| | TYPE T-23 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-26 | 4 | 0.761% | 0.217% | 0.212% |
| | TYPE T-28 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE T-29 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-31 | 3 | 0.680% | 0.194% | 0.189% |
| L03 | | | | | |
| | TYPE T-21 | 7 | 0.990% | 0.282% | 0.276% |
| | TYPE T-23 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-26 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-28 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-29 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-31 | 3 | 0.680% | 0.194% | 0.189% |
| L02 | | | | | |
| | TYPE T-21 | 7 | 0.990% | 0.282% | 0.276% |
| | TYPE T-23 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-26 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-28 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE T-29 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE T-31 | 3 | 0.680% | 0.194% | 0.189% |
| **Podium Units** | | | | | |
| L08 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-4 | 8 | 1.120% | 0.319% | 0.312% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| L07 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-4 | 8 | 1.120% | 0.319% | 0.312% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |

| | | | | | |
|---|---|---|---|---|---|
| L06 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-6 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-7 | 3 | 0.680% | 0.194% | 0.189% |
| L05 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-6 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-7 | 3 | 0.680% | 0.194% | 0.189% |
| L04 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-6 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-7 | 3 | 0.680% | 0.194% | 0.189% |

| | | | | | |
|---|---|---|---|---|---|
| L03 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-3 | 5 | 0.898% | 0.256% | 0.250% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-6 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-7 | 3 | 0.680% | 0.194% | 0.189% |
| L02 | | | | | |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-1 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE P-2 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-5 | 6 | 0.928% | 0.265% | 0.258% |
| | TYPE P-6 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-7 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE P-8 | 4 | 0.761% | 0.217% | 0.212% |
| | TYPE P-9 | 6 | 0.928% | 0.265% | 0.258% |
| **Townhome Units** | | | | | |
| L04 | | | | | |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE TH-2 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE TH-2 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| L03 | | | | | |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE TH-2 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE TH-2 | 2 | 0.518% | 0.148% | 0.144% |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| L02 | | | | | |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE TH-2 | 1 | 0.483% | 0.138% | 0.135% |
| | TYPE TH-3 | 3 | 0.680% | 0.194% | 0.189% |
| | TYPE TH-3 | 3 | 0.680% | 0.194% | 0.189% |
| L01 | | | | | |
| | TYPE TH-5 | 4 | 0.761% | 0.217% | 0.212% |

| | | | | |
|---|---|---|---|---|
| TYPE TH-5 | 4 | 0.761% | 0.217% | 0.212% |
| TYPE TH-5 | 4 | 0.761% | 0.217% | 0.212% |
| TYPE TH-5 | 4 | 0.761% | 0.217% | 0.212% |
| | | 100.000% | 28.511% | 27.852% |

## COMMERCIAL/RETAIL UNITS
## PERCENTAGES FOR ALLOCATION OF VARIABLE EXPENSES

***Note:***

*Percent of Variable Expense for the MIRA Master Association Residential Budget and the MIRA Master Association General Budget is calculated as follows for each unit:*

*Retail Unit SF/439,499 = Retail Unit % Variable Expense*

| | SUB ASSOCIATION | MIRA MASTER RESIDENTIAL | MIRA MASTER GENERAL |
|---|---|---|---|
| Retail 101 | NA | NA | 0.326% |
| Retail 102 | NA | NA | 0.292% |
| Retail 103 | NA | NA | 0.210% |
| Retail 104 | NA | NA | 0.168% |
| Retail 105 | NA | NA | 0.338% |
| Retail 106 | NA | NA | 0.314% |
| Retail 107 | NA | NA | 0.361% |
| Retail 108 | NA | NA | 0.302% |
| | | | 2.311% |

# EXHIBIT C

## MINIMUM MAINTENANCE RESPONSIBILITIES

**[THE FOLLOWING STANDARDS APPLY IN ADDITION TO THE GENERAL MAINTENANCE OBLIGATIONS AND STANDARDS AND ANY OTHER SPECIFIC OBLIGATIONS AND STANDARDS DESCRIBED IN SECTIONS 5.1 AND 5.2 OF THIS DECLARATION]**

| ITEM | OWNER/ASSOCIATION RESPONSIBILITY |
|---|---|
| **UNIT OR BUILDING EXTERIOR** | |
| Unit Entry Door | Owner:<br><br>Owner shall (i) clean, maintain and paint interior surface of door, and (ii) clean, maintain, repair and replace (except if the Association is replacing the door, in which case the Association shall replace such equipment) all hardware, hinges, glass, the handle and lock mechanism, door closers, drop seals, door sweeps and other mechanical equipment on the exterior boundaries of a residential unit.<br><br>Master Association:<br><br>Association shall (i) repair and replace exterior surface of door, and (ii) clean, maintain, repair, replace, paint, stain or waterproof exterior surface of door. |
| Exclusive Use Areas - Deck Areas and Patio Areas | Owner:<br><br>Owner shall (i) sweep, clean, and perform routine maintenance (excluding resealing in accordance with schedules in the Budget) floor surface of deck and patio areas, and any fences within the Exclusive Use Areas yards, and keep free of debris and trash, (ii) maintain any Owner landscaping, (iii) replace light bulbs for any lighting on deck and patio areas, (iv) clean, maintain, repair and keep any drains and gutters located on deck and patio areas clear and free of obstruction, and (v) replace any drainage covers.<br><br>Master Association:<br><br>Association shall repair, replace, paint, resurface and reseal floor surface of deck and patio areas. |
| Exterior Deck and Patio Doors | Owner:<br><br>Owner shall maintain all portions of the door and door hardware, door adjustments, including weather proofing, sheathing, frame, lock mechanism, screens. Owner must keep patio door tracks clean and free of debris as the door tracks drain to the outside. |

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| | Master Association:<br><br>Association shall be responsible for painting, staining or waterproofing exterior surface of door. |
| Exclusive Use Easement Areas | Owner:<br><br>Owner shall (i) clean any railings surrounding the Exclusive Use Easement Areas, and (ii) replace any light bulbs within the Exclusive Use Easement Areas.<br><br>Master Association:<br><br>Association shall (i) maintain, repair, replace and paint any railings surrounding the Exclusive Use Easement Areas, and (ii) clean, maintain, repair and replace exterior lighting fixtures within the Exclusive Use Easement Areas. |
| Mailbox | Owner shall be responsible for replacement of key and lock, in the event of lost key. |
| Windows, including metal frames, tracks and exterior screens of glass doors and windows<br><br>Special Note: The operable windows are sophisticated, engineered mechanisms that must be maintained in accordance with the manufacturer's guidelines. This includes the opening mechanism that may be difficult to operate due to the nature of penetrating a high performance high-rise curtain wall. | Owner:<br><br>Owner shall (i) maintain all glass, any screens and lock mechanism, (ii) operable window mechanisms, and (iii) replace broken glass.<br><br>Owner shall be responsible for washing of the interior of all windows in the Owner's Unit.<br><br>Owner shall be responsible for washing of the exterior of all windows of the Owner's Unit that may be safely reached from the Unit or Excusive Use Common Area deck or balcony.<br><br>Owner shall pay for the cost of repair and/or replace all windows serving that Owner's Unit, provided that the Master Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion.<br><br>Master Association:<br><br>Association shall (i) maintain frame, weather stripping and caulking, and (ii) maintain, repair and/or replace all windows in the common portions of Buildings. The Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion. |
| Exterior Building Lighting | Owner shall maintain light fixtures controlled by switches in Unit or separately metered to Unit, and replace light bulbs as necessary. |

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| Storage Spaces | Owner:<br><br>Owner shall clean, maintain and repair the interior and the lock of the storage space.<br><br>Master Association:<br><br>Association shall clean, maintain, repair, replace and paint the exterior door of the storage space and any chain link or other type of fences or enclosures. |
| Individual Electric Car Chargers Assigned to Certain Owners | Master Association shall be obligated to clean, maintain, repair and replace the electric car charger, but any costs in doing so shall be payable by the applicable Owner for whom the maintenance or service is being performed. |
| Outside Air Filter Replacement | Owner shall be obligated to replace the outside air filter that serves Owner's Unit. |
| **UNIT INTERIOR** | |
| Unit Interior | Owner:<br>Owner shall maintain all interior doors, door frames, door locks, door thresholds, door hardware, interior wall surfaces (including paint and/or wall coverings), window coverings, drywall, cabinets, countertops, backsplashes, bathroom and kitchen fixtures, floor coverings, ceilings, permanent fixtures, trade fixtures, appliances, mirrors, any HVAC unit exclusively servicing the Owner's unit (including the components that are located outside the Unit, if any), toilets, smoke detectors, washing machine water hoses, washer and dryer pan drains and connections, plumbing fixtures, and all other items within the Unit whether free-standing or built in. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units may be pierced or otherwise altered or repaired without approval from the Architectural Control Committee.<br><br>Master Association:<br>Association shall maintain and repair the building fire alarm system and fire sprinkler heads within the Unit. |
| Water, Gas and Sewer Pipes, Water Pressure Regulator, Water Heater, Plumbing Outlets and Fixtures, Ducts (Heating, Dryer, Stove, Oven), Electrical, Circuit Breakers, Electrical Outlets and Fixtures, HVAC units | Owner shall maintain portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit (i.e., from the interior surface of the Unit's walls to the appliances, and kitchen and bathroom facilities within the Unit). An Owner may plunge blocked kitchen and bathroom facilities in his Unit, but may not use a snake, or cause a snake to be used, in any pipes unless instructed to do so by the Master Association. Owner shall maintain and repair the electrical system exclusively serving the Owner's Unit, including, but not limited to, light fixture, light switches, light bulbs, bathroom fan fixtures, and wiring. Owner shall maintain the heating system and air- |

| | |
|---|---|
| | conditioning units, including, but not limited to baseboard heaters, wall-mounted heaters, air-conditioning and heater fans and components. Owner is obligated to hire Master Association, or to hire a contractor approved by the Master Association to perform any maintenance of electrical wiring, or water, gas and sewer pipes or lines located within the Unit. |
| Clothes Washer Hoses | Each Owner shall have the water hose(s) for any clothes washer inspected annually, and shall provide proof of such inspection to the Master Association. |
| **UTILITIES** | |
| Telephone Wiring and Equipment | Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Common Area, and is responsible for obtaining and having services, unless otherwise provided in the Governing Documents. |
| Gas and Electric | Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Common Area, and is responsible for obtaining and having serviced, unless otherwise provided in the Governing Documents. |

**EXHIBIT D**

**BMR PARKING POLICIES**

[ATTACH APPROVED PARKING POLICIES]

September 5, 2019

MIRA

**Parking Policies – BMR units**

There are 236 parking licenses designated for MR residents ( the "MR Parking Licenses"). There are 99 parking licenses designated for BMR residents (the "BMR Parking Licenses"). The BMR Parking Licenses must remain exclusively for the use of BMR owners for the life of the project. The Master HOA will bill BMR owners on a monthly basis for an HOA parking assessment, which will be equal to the lesser of (i) one-half the current market rate for parking in the neighborhood or (2) the operating cost of the Garage, an amount that is subject to change from time to time, but not more than once annually. BMR and MR units will be charged equally for parking assessments for the 335 parking licenses.

When initially selling BMR units, the opportunity to rent one (1) BMR Parking License via a license agreement with the Master HOA will be offered in lottery rank order until all BMR Parking Licenses are used. If the demand for parking from BMR owners exceeds the available BMR Parking Licences, the Seller will create a BMR Parking Waitlist, in lottery rank order, consisting of the BMR owners that were not granted a BMR Parking License. After initial sale of the BMR units, the BMR Parking Waitlist will be maintained by the parking operator/Master HOA. When a BMR owner sells his/her unit, if there is a parking license assigned to that unit, it automatically goes into the pool of available BMR Parking Licenses to be offered to those on the BMR Parking Waitlist. As new BMR owners purchase a unit, they are not automatically entitled to parking, but rather will be added to the end of the BMR Parking Waitlist. Parking in the available pool of BMR Parking Licenses will be offered to the next owner on the BMR Parking Waitlist.

The parking operator/Master HOA will maintain a second waitlist of any BMR owners requesting a second BMR Parking License, the "Supplemental BMR Parking Waitlist." If there are remaining/unused BMR Parking Licenses and no one on the BMR Parking Waitlist, the parking operator/Master HOA shall have the right to offer the BMR Parking License to BMR owners on the Supplemental BMR Parking Waitlist. Any such supplemental BMR Parking License is revocable with a thirty (30) day notice and will be revoked in the reverse order that the licenses were issued. BMR owners holding 2 BMR Parking Licenses will not be permitted to apply for additional BMR Parking Licenses.

If there are remaining/unused BMR Parking Licenses and no BMR owners on the BMR Parking Waitlist and Supplemental BMR Parking Waitlist, the parking operator/Master HOA must obtain written consent from MOHCD before offering the licenses to MR owners. MOHCD has 5 business days to respond to a written request to offer a BMR Parking License to a non BMR owner. Upon MOHCD's approval, at its sole discretion, the BMR Parking License will be permitted to be assigned to an MR owner on a month-to-month basis until a BMR owner on the BMR Parking Waitlist or on the Supplemental BMR Parking Waitlist requests a license. Any such BMR parking licenses being issued to a MR owner will be made available to a BMR owner on the BMR Parking Waitlist or on the Supplemental BMR Parking Waitlist within approximately 35-40 days from the date the request for such BMR parking license is received.

The Master HOA or the HOA Management Company (if the Master HOA authorizes the HOA Management Company in this capacity) shall establish a system to maintain accurate records and respond to any reasonable annual monitoring requests regarding BMR Parking Licenses from MOHCD. Upon request, the responsible party (Master HOA, HOA Management Company) shall provide MOHCD with the current inventory, waitlists (the BMR Parking Waitlist and Supplemental BMR Parking Waitlist), and operating

costs and fees of the BMR Parking Licenses. BMR parking policies shall be memorialized in the Master HOA Records.