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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
BAKER COLLECTIVE CONDOMINIUMS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
BAKER COLLECTIVE CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR BAKER COLLECTIVE CONDOMINIUMS (“*Declaration*”) is made by Baker Center LLC, a Delaware limited liability company (“*Declarant*”). The capitalized terms used in the Preamble are defined in ARTICLE I.

P R E A M B L E

A. Declarant is the owner of certain real property located in the City of Costa Mesa, Orange County, California, more particularly described in *Exhibit A* attached hereto (the “*Project*”). Declarant deems it desirable, for the efficient preservation of the Project and the Improvements located thereon, to create a “condominium project,” as defined in Section 6542 of the California Civil Code, to subdivide the above-referenced property as authorized by Section 66427 of the California Government Code into four (4) “condominiums” as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of ownership and use for the Project for the benefit of all condominiums created therein pursuant to the Commercial and Industrial Common Interest Development Act (the “*Commercial and Industrial Act*”).

B. Declarant’s general plan for development of the Project provides for formation of a corporation (the “*Association*”) pursuant to the California Nonprofit Mutual Benefit Corporation law (contained at California Corporations Code Sections 7100 *et seq.*) to which will be assigned the powers of (1) owning, maintaining and administering the Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created in connection therewith. The Members of the Association will be the Owners of Condominiums within the Project. The Association shall exercise those powers referred to in Section 6752 of the California Civil Code.

C. The Project consists of four Units which are all located at 660 Baker Street in Costa Mesa, California.

D. The Project is to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision and sale of the Project. All provisions of this Declaration are imposed as equitable servitudes on the Project. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden each and every portion of the Project and shall be binding on and for the benefit of the Project and all Persons acquiring any interest in the Project and may be enforced by Declarant, any Owner and the Association.

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Condominiums representing their share of Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 6800.

1.1.2 **Architectural Guidelines.** Architectural Guidelines means the design criteria and construction procedures adopted by the Board pursuant to Section 6.2 below.

1.1.3 **Articles.** Articles means the Articles of Incorporation of the Association as currently in effect.

1.1.4 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment or Special Assessment imposed by the Association on the Condominiums within the Project pursuant to the terms of this Declaration.

1.1.5 **Assessment Units.** Assessment Units means, as to each Condominium the proportionate share of the Project allocated to such Condominium on **Exhibit D** attached hereto for purposes of determining the proportionate share of Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments to be allocated to the Owner of such Condominium, as well as their voting rights. Declarant has calculated the proportionate shares and Assessment Units set forth on **Exhibit D** based generally on each Unit's relative square footage as well as their anticipated usage of the Association Property.

1.1.6 **Association.** Association means "BAKER COLLECTIVE CONDOMINIUMS OWNERS ASSOCIATION", a California nonprofit mutual benefit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), and its successors in interest. The Association is an "association" as defined in Section 6528 of the California Civil Code.

1.1.7 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to ARTICLE VIII.

1.1.8 **Association Property.** Association Property means all real property owned from time to time in fee title by the Association, and which is made subject to the restrictions on Association Property in the Governing Documents. Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof, as well as to all Improvements thereon. The Association Property within the Project shall include (i) any Common Utility Improvements located within a Unit or any other portion of the Project, (ii) all sidewalks, walkways, retaining walls, drive aisles and parking areas (including the covered parking garage) in the Project, (iii) all landscaping and irrigation systems in the Project, (iv) Project signage, monument signs, Project lighting (including street lights, parking lot lights, and light poles), trash enclosures, and shared mailboxes located outside the Buildings; (v) private drainage and related pollution control devices, including any private storm drains and water quality devices appurtenant thereto; and (vi) all other portions of the Project excluding the Units and the Common Area. The Association Property within the Project shall further include easements and reservations for the benefit of the Association over the real property within the Project as set forth in this Declaration. Association Property is “common area” as that term is defined in Section 6532 of the California Civil Code.

1.1.9 **Board or Board of Directors.** Board or Board of Directors means the Association’s Board of Directors.

1.1.10 **Budget.** Budget means a written, itemized estimate of the Association’s income and Common Expenses.

1.1.11 **Building.** Building means each of the four (4) commercial buildings located within the Project and all additions, alterations, replacements and modifications thereto.

1.1.12 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect.

1.1.13 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge levied against the Owners and their Condominiums representing their share of the Association’s cost for installing or constructing capital improvements on the Association Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are Special Assessments as described in California Civil Code Section 6800.

1.1.14 **City.** City means the City of Costa Mesa, California, and its various departments, divisions, employees and representatives.

1.1.15 **Close of Escrow.** Close of Escrow means the date on which a grant deed is executed and Recorded by Declarant, as grantor, in order to convey title to a Condominium to the first grantee thereof. The term “Close of Escrow” shall not include

Recording a deed between Declarant and any affiliate of Declarant or any successor to any rights of the Declarant.

1.1.16 **Common Area.** Common Area means that certain volume of airspace within the Project described as “Common Area” in the Condominium Plan. Upon the first Close of Escrow for the sale by Declarant of a Condominium within the Project, the Common Area designated on the Condominium Plan shall be owned by the Owners of all Condominiums within the Project as tenants-in-common. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Common Area constitutes real property held in undivided interests as required under Section 6542(c) of the California Civil Code.

1.1.17 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include:

(a) The actual and estimated costs of maintaining, managing and operating the Association Property (including amounts incurred for maintenance this Declaration imposes on the Association, including landscaping and irrigation maintenance within the Association Property, shared parking facilities, and access drives, Common Utility Improvements, signage serving more than one Unit, and all other common facilities and common improvements;

(b) The cost of all utilities and mechanical and electrical equipment serving the Association Property including fire service, common water service, irrigation service, sewer service, solid waste service and WQMP or BMP maintenance as well as any commonly-metered utilities serving the Units (as of the date of this Declaration, there is a single water meter serving the entire Project, the costs of which water shall be allocated pursuant to Article VIII below), and any other utility services provided by the Association;

(c) The costs and fees attributable to managing and administering the Association, compensating the Manager (if applicable), accountants, attorneys and employees, all insurance covering the Association Property and the Directors, officers and agents of the Association, and bonding the Board members;

(d) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(e) Taxes and assessments paid by the Association;

(f) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Project;

(g) Reasonable Reserves; and

(h) All other expenses incurred by the Association for any reason whatsoever in connection with the Project or with services provided to or for the benefit of Owners and occupants of the Project as permitted by the Governing Documents.

1.1.18 **Common Property.** Common Property means the Common Area, the Association Property and the Improvements thereon. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof.

1.1.19 **Common Utility Improvements.** Common Utility Improvements means all gas, water and waste pipes, all sewers, ducts, chutes, conduits, wires and other utility installations located anywhere within the Project which serve the Association Property or multiple Units within the Project. The Common Utility Improvements shall further include all lines, pipes or conduits serving the Association Property and/or multiple Units within the Project commencing from the point of connection to utility lines within a public right-of-way up to, but excluding, the point at which utility improvements serving only one of the Units connect to such Common Utility Improvements.

1.1.20 **Condominium.** Condominium means an estate in real property as defined in California Civil Code Section 6542. A Condominium consists of a separate ownership interest in fee in a Unit together with an undivided fee simple ownership interest in the Common Area and all easements appurtenant thereto as well as any Exclusive Use Area conveyed appurtenant thereto. Subject to the provisions of Section 10.3 below, the undivided fee simple interest in the Common Area is in accordance with the proportionate shares shown in *Exhibit D* attached hereto; and shall be held by the Owners of Condominiums in the Project as tenants-in-common. Each undivided interest in the Common Area, fee title to the respective Unit, all easements conveyed therewith and the appurtenant Membership in the Association shall not be separated or separately conveyed, and each such undivided interest, Membership and easements 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 Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 6656 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

1.1.21 **Condominium Plan.** Condominium Plan means the Recorded Condominium Plan for the Project, as amended from time to time. The Condominium Plan shall consist of (a) a description or survey map of the Project which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Project, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Project.

1.1.22 **County.** County means the County of Orange, California.

1.1.23 **Declarant.** Declarant means Baker Center LLC, a Delaware limited liability company, its successors, and any Person to which it shall have assigned any of its rights under this Declaration by an express written assignment. As used in this Section, “successor” means a Person who acquires Declarant or substantially all of Declarant’s assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Unless otherwise expressly provided in the Declaration, all actions that may be taken by Declarant may be chosen by Declarant in its sole discretion. Declarant is a developer as described in California Civil Code Section 6870. At any time Declarant owns any Unit within the Project, it possesses valid “Declarant Voting Rights.”

1.1.24 **Declarant Rights Termination Date.** Declarant Rights Termination Date means the date after which Declarant or any of its successors or assigns who have obtained Declarant rights in accordance with the terms of this Declaration no longer own any Condominiums within the Project.

1.1.25 **Declaration.** Declaration means this entire instrument, including the Preamble, as amended and restated from time to time.

1.1.26 **Exclusive Use Area.** Exclusive Use Area means any portion of the Association Property over which an exclusive use easement may be granted by Declarant or the Board to the Owner of one or more (but not all) of the Units within the Project for the exclusive use of such Owner and the Permittees of such Unit, including internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of that Unit, in accordance with California Civil Code Section 6550. In addition, each Owner shall be entitled to the following Exclusive Use Areas which shall be appurtenant to their Unit:

(a) **Patio.** Patio shall be that certain portion of the Association Property designated for use by some Units as a patio, the exclusive use of which area shall be reserved to the Owner of such Unit and depicted and identified on the Condominium Plan as exclusive to a specific Unit. By way of clarification, the Condominium Plan identifies at least one (1) patio area as exclusive to each Unit, each of which is depicted as “E-P-#”.

(b) **Garage.** Garage shall be that certain portion of the Association Property designated for use by some Units as a garage, the exclusive use of which garage shall be reserved to the Owner of such Unit and depicted and identified on the Condominium Plan as exclusive to a specific Unit. By way of clarification, the Condominium Plan identifies at least two (2) garages as exclusive to each Unit, each of which is depicted as E-G-#”.

1.1.27 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

1.1.28 **Governing Documents.** “Governing Documents” means this Declaration, the Articles and Bylaws of the Association, the Rules and Regulations, any Architectural Guidelines, and any amendments or supplements to any of the foregoing.

1.1.29 **Governmental Requirements.** “Governmental Requirements” means all applicable laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions and all other requirements of the City and any other federal, state or local governmental authority with jurisdiction over the Project.

1.1.30 **Hazardous Materials Laws.** “Hazardous Materials Laws” means all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of “Hazardous Materials” (as defined below) in, on, above, under or otherwise affecting the Project including, without limitation, (i) Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), and (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*), Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, Section 401.15 of the Clean Water Act, 40 C.F.R. 116, and Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 *et seq.* As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, and includes, without limitation, petroleum, asbestos, pesticides, polychlorinated biphenyls, solvents, and any other material or substance which is defined as a “Hazardous Waste,” “Extremely Hazardous Waste,” “Restricted Hazardous Waste,” “Hazardous Substance,” or “Hazardous Material” under applicable Hazardous Materials Law, or otherwise listed under Article 9 and defined as hazardous or extremely hazardous pursuant to Article 2 of Title 22 of the California Administrative Code, Division 4.5, Chapter 10.

1.1.31 **Include, includes or including.** Whether capitalized or not, include means “include without limitation.”

1.1.32 **Improvement.** Improvement means (a) the Buildings or any other building or structure located on the Project or Association Property from time to time and any appurtenance thereto, (b) any Signs, poles, lights or light standards, walkways, irrigation systems, roads, driveways and access ways, surface parking areas or fences located outside of a Building, (c) any type of wall, antenna, awning or stairway deck

attached or adjacent to or located within a Building, (d) any type of windbreak, landscaping, hardscape or planting on the Association Property and (e) any Common Utility Improvements or other pipes, sewers, ducts, chutes, conduits, wires or other utility installations located anywhere within the Project or Association Property. The term Improvement shall further include any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

1.1.33 **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.34 **Manager.** Manager means the Person retained by the Association, if any, to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person. The Manager may be Declarant or an affiliate of Declarant.

1.1.35 **Member, Membership.** Member means Declarant and any other Person holding a Membership in the Association pursuant to Section 3.5 below. “Membership” shall mean the voting and other rights and privileges of Owners of the Condominiums as Members of the Association, together with the corresponding duties and obligations, as provided in the Governing Documents.

1.1.36 **Mortgage.** Mortgage means any mortgage, indenture of mortgage, or deed of trust encumbering the interest, whether fee or leasehold, of an Owner in a Condominium which constitutes a first-priority lien on that interest.

1.1.37 **Mortgagee.** Mortgagee means any Person who is designated as a mortgagee, or trustee and beneficiary under a Mortgage, and to the extent applicable, a fee owner or lessor or sublessor of any Condominium which is the subject of a lease under which any Owner becomes a lessee in a so-called “sale and leaseback” or “assignment and subleaseback” transaction, unless such Person has assigned their rights under the Mortgage by a Recorded assignment. If the Person has assigned their rights under the Mortgage by a Recorded assignment, then the assignee of the rights is the Mortgagee.

1.1.38 **Mortgagor.** Mortgagor means a Person who Mortgages their property to another.

1.1.39 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board, as provided in the Bylaws and this Declaration.

1.1.40 **Owner.** Owner means the Person who is the record owner of fee simple title to any Condominium within the Project. The term Owner may include a seller under an executory contract of sale but excludes Mortgagees. If a Condominium is subject to a lease, the owner of the fee title and not the lessee of the Condominium shall be deemed

the Owner regardless of the term of the Lease. If an Owner leases an entire Condominium to a Person, such Owner may assign its rights and delegate its obligations under this Declaration as to such Condominium to the lessee under any such lease so long as such Owner provides notice thereof to the Board and remains responsible for its obligations under this Declaration. Whenever an Owner transfers fee title to such Owner's entire interest in a Condominium to another Person, the transferring Owner shall be released and discharged from the obligations thereafter accruing under this Declaration, and the new Owner shall be responsible for all such obligations thereafter accruing under this Declaration and shall be bound by this Declaration.

1.1.41 **Owner Improvements.** Owner Improvements means any Improvements installed by or on behalf of an Owner or any Permittee thereof which are located entirely within such Owner's Unit or any Exclusive Use Area appurtenant thereto. Nothing in this definition shall be deemed to imply a right on the part of any Owner to install Owner Improvements except in strict compliance with the provisions of ARTICLE VI below.

1.1.42 **Permittee.** Permittee means any Person from time to time entitled to the use and occupancy of any Unit within the Project (or any portion thereof) under any lease, deed or other arrangement with an Owner and the respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Persons.

1.1.43 **Person.** Person means a natural individual or any entity recognized under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.44 **Project.** Project means all of the real property shown on a recorded condominium plan including all the Units, Association Property and Common Area as described in *Exhibit A* attached hereto. The Project is a "common interest development" and a "condominium project" as defined in Sections 6534 and 6542 of the California Civil Code, respectively.

1.1.45 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Condominiums representing their share of the Association's cost to reconstruct the Association Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Reconstruction Assessments are special assessments as described in California Civil Code Section 6800.

1.1.46 **Record, File or Recordation.** "Record," "File," or "Recordation" means, with respect to any document, the entry of such document in the Official Records of the Orange County Recorder.

1.1.47 **Reserves.** Reserves means those Common Expenses for which the Association funds are set aside pursuant to ARTICLE VIII of this Declaration for funding the maintenance, repairs and replacement of the major components of the Association Property or to make additional Improvements to the Association Property which would not reasonably be expected to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Association obtains pursuant to Section 9.1 below. The amount of Reserves to be maintained by the Association will be determined annually by the Board pursuant to reserve guidelines established in accordance with prudent property management practices generally applied for a commercial “common interest development.” The Board may modify or suspend funding of Reserves as it determines appropriate in its sole discretion, including, without limitation, the right to maintain Reserves at less than one-hundred percent (100%) of the Association’s cost to reconstruct the Association Property.

1.1.48 **Rules and Regulations.** Rules and Regulations means the Rules and Regulations for the Project, as currently in effect or as adopted from time to time by Declarant or the Board.

1.1.49 **Sign.** Signs means any advertising, placards, signs, names, billboards, placards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained within the Association Property, or on any portion of the Buildings visible from the outside of such Building.

1.1.50 **Sign Program.** Sign Program means the guidelines and requirements approved by the City and adopted from time to time by Declarant or, following the Declarant Rights Termination Date, the Board for the regulation of Signs within the Project setting forth standards relating to dimensions, design, illumination, color, style and location of Signs (as adopted, amended or modified from time to time by Declarant or the Board).

1.1.51 **Special Assessment.** Special Assessment means a charge against a particular Owner reimbursable by that Owner to reimburse the Association for costs incurred for corrective action performed pursuant to the Governing Documents, plus interest and other charges on such Special Assessment. Special Assessments may include collection costs, expenses and reasonable attorneys’ fees incurred by the Association in the collection of Annual, Capital Improvement or Reconstruction Assessments but shall not include any fines or penalties imposed by the Association as a result of any violation of the Governing Documents which is not reasonably related to costs incurred by the Association in connection therewith.

1.1.52 **Unit.** Unit means a separate interest in space as described in Civil Code Section 6542(b). Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. The approximate boundaries of each Unit will be shown on the Condominium Plan. The upper and lower boundaries of the Unit are the upper and lower elevations shown on the Condominium Plan. The upper boundary of the

Units extends above the parapet and roof of the respective Building in which the Unit is contained. The lower boundary of the Units extends below the foundation of the respective Building in which the Unit is contained. The lateral boundaries of the Units are the exterior finished surfaces of the exterior Building walls. Without limiting the foregoing, each Unit includes the following elements of the Building in which the Unit is contained: all bearing walls, structural and exterior walls, roofs, slabs, foundations, exterior windows and doors, central heating, central air conditioning equipment, flues, chutes, conduits, gas, water and waste pipes, plumbing, wires and other utility installations contained within the respective Building. The foregoing interpretation shall apply regardless of settling or lateral movements of Improvements.

1.2 INTERPRETATION.

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a commercial condominium development and for maintaining the Common Property. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise. Any reference in this Declaration to time of performance of obligations or to elapsed time means consecutive calendar days, months or years, as applicable, unless otherwise expressly provided.

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

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations or Condominium Plan, then the provisions of this Declaration shall prevail.

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

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

1.3 DISCLOSURE REGARDING AGE AND CONDITION OF THE PROJECT. In light of the age and condition of the Project, the Declarant provides the following disclosure and disclaimer to the Association and all purchasers of a Unit in the Project:

Not New Development. Declarant advises and discloses that the Project is not a new construction or a new development. It is a condominium conversion. The Project was developed more than forty-five (45) years ago. The Association and purchasers of a Unit are advised not to expect the Project, including Improvements in the Units and the Association Property within the Project, to be at or near the condition of a brand-new commercial development. Because many Improvements in the Project are over 45 years old, the Association and any purchaser of a Unit should be aware that there may be portions of the Project, including portions of the Units or the Association Property, which may now or soon be approaching the end of their useful life, or otherwise need to be repaired or replaced. All parties should undertake their own inspection of the Project, and come to their own conclusions as to the condition of the Project.

As-Is, Where-Is. The Association and the Owners, by taking title and continuing to use property and Improvements within the Project, acknowledge that they take and use such properties and Improvements “as-is, where-is”. Declarant makes no representations or warranties to the Association, the Owners, or any purchasers of a Unit as to any portion of the Project’s existing or ongoing fitness for any particular use. Owners and the Association are expected to make their own investigations into the improvements on their Units and the Association Property to confirm their condition and fitness for their actual and anticipated uses. The Association and the Owners, by virtue of receiving ownership or rights to the Association Property or purchasing a Unit in the Project, waive any claims that they may have against the Declarant that they were unaware of the age and condition of the Project, including the Association Property or individual Units.

Reserve Accounts. The Project is being developed in accordance with the Commercial and Industrial Common Interest Development Act (California Civil Code Sections 6500 et seq., the “Act”). There is no requirement under the Act for the Declarant or the Association to undertake a reserve study or to maintain reserves for future repairs to the common areas of the Project. Declarant has not undertaken a reserve study for the Project. It will remain the obligations of the Owners and the Association, in accordance with their business judgment, to determine whether or how much reserves should be maintained. Tax counsel should be consulted as to the impact of retaining such reserves.

ARTICLE II
USE RESTRICTIONS

The Project shall be held, used and enjoyed subject to the following restrictions and exemptions and rights of Declarant in the Restrictions.

2.1 **PERMITTED USES.** Except to the extent otherwise provided in this Declaration and subject to Section 2.2 below, the Units in the Project may be used for any uses which are permitted under all applicable Governmental Requirements, and not otherwise expressly prohibited herein; provided, however, that in the event any Owner or Permittee thereof desires to commence a use which, under applicable Governmental Requirements, would require the issuance of a conditional use permit by the City, then such use shall not be permitted hereunder unless such use is first approved by Declarant or, following the Declarant Rights Termination Date, the Board, in each case in their sole discretion. Notwithstanding the foregoing, neither Declarant nor the Association shall be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, on account of any approval of a permitted use.

2.2 **PROHIBITED USES.** Notwithstanding Section 2.1, the following operations and uses shall not be permitted in the Project unless specifically authorized by the Board, in its sole discretion, and otherwise permitted by applicable Governmental Requirements:

- (a) Any auction, public sale, or other auction house operation;
- (b) Any business that is primarily sexually oriented, such as a business offering nude or seminude entertainment, escort service, adult theater, adult bookstore, or similar business;
- (c) Emergency shelters for the homeless, service centers for the homeless, supportive housing facilities, transitional housing facilities, or any type of use that provides for free or paid overnight stays of any duration;
- (d) Probation offices or facilities of any kind or nature (including without limitation any offices whose business clientele consists primarily of parolees or adult and juvenile probationers);
- (e) Jails, detention facilities, law enforcement offices or facilities, and any ancillary uses;
- (f) Smoke shops or smoking or hookah lounges or providers;
- (g) Pawn brokers or thrift shops;
- (h) Community care facilities, child care centers, or child day care centers;
- (i) Marijuana dispensaries (including, but not limited to, medical or recreational marijuana dispensaries), as well as marijuana cooperatives, cultivators, clinics, collectives, operators and any marijuana establishments or providers;
- (j) Veterinary facilities or clinics, pet day care, pet boarding, dog day care, pet grooming, or pet shops;
- (k) Tattoo parlors or massage parlors;
- (l) Assembly uses including but not limited to those congregations or gatherings conducted for the primary purpose of a civic, political or social

function; however, this prohibition against assembly uses is not intended to prohibit any social functions, events or gatherings, or educational or training sessions that are ancillary in nature to the primary permitted use;

(m) Clubs, meeting halls or conference centers;

(n) Any other uses which would materially, adversely affect the attractiveness, marketability or value of the Project, as determined by the Board in its reasonable discretion; and

(o) Any other uses which would increase the rate of insurance for the Project or any Unit (provided, however, that operations or uses which are normal and customary to any permitted use but which nonetheless would cause an increase in the rate of insurance for the Project or any Improvement may be conducted with the prior written permission of the Board, if the Owner requesting such permission reimburses any additional insurance costs incurred by the Association or any other Owner as a result of such use).

2.3 NUISANCES. Without limiting the foregoing, no Owner may use any Condominium within the Project for any use which would violate the provisions of this Declaration or which would otherwise in any way (a) constitute a nuisance to the Owners or Permittees within the Project or otherwise interfere with the quiet enjoyment thereof, or (b) increase the rate of insurance for the Project or any Condominium within the Project (unless the Owner agrees to pay for any and all increases in insurance rates). Every use shall be operated (i) so that it does not emit any (a) electro-mechanical or electro-magnetic disturbance radiation that would interfere with uses or activities conducted on any other portion of the Project, or (b) any obnoxious or dangerous amount of heat, glare, radiation or fumes outside of the Unit within which the use is being conducted, and (ii) so that ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point outside of the Unit within which the use is being conducted. No materials or wastes shall be permitted within a Unit in such form or manner as to permit transfer of such materials or wastes outside of that Unit by natural causes or forces.

2.4 PARKING AND VEHICULAR RESTRICTIONS.

2.4.1 Subject to Section 2.4.2 and Section 2.4.3 below, parking within the Association Property is free, open and unreserved, and all parking spaces within the Association Property are available to all Owners and their Permittees on a first-come, first-served basis; provided however, that each Unit's right to utilize the parking spaces within the Association Property shall be based on such Unit's proportionate share in the Project as set forth in *Exhibit D*, and the Board shall have the authority to adopt and enforce reasonable Rules and Regulations to monitor and ensure that no Unit exceeds their proportionate share of the parking spaces in the Association Property based on their proportionate share in the Project as set forth in *Exhibit D*. No Owner or Permittee of any Unit may construct or install any fence, barrier or other Improvement which would obstruct the free flow of traffic in the shared driveways, drive aisles or parking areas within the Association Property.

2.4.2 All parking spaces located within any garage that is designated as an Owner's Exclusive Use Area shall be available only to the Owner of such Unit and their Permittees; such garage parking spaces shall not be open and available to all Owners and their Permittees.

2.4.3 The Declarant or the Board shall have the right but not the obligation, to enact and enforce the parking Rules and Regulations within the Association Property. The Declarant or the Board may assign and reassign exclusive use parking areas to each Unit, designate exclusive parking spaces to be utilized by the Permittees of a specified Unit during specified time periods, issue parking permits for authorized users of allocated parking spaces and/or establish such other system of controlled parking on the Association Property as the Board may determine reasonably necessary to ensure equitable use of the available parking within the Project.

2.4.4 Without limiting the foregoing, no vehicle shall be parked on any portion of the Project other than within the designated parking spaces except while loading or unloading within approved loading areas on the Association Property. No Person shall park, store or keep anywhere on the Project, including overnight parking, any operable or inoperable large commercial vehicle, dump truck, cement mixer truck, oil or gas truck, camping trailer, boat, aircraft, mobile home, recreational vehicle, motor home or any other similar vehicle except within an enclosed Building and subject to compliance with all applicable Governmental Requirements. No vehicle repair (except in emergencies) or other similar activities may be undertaken in any parking areas. No parking shall be permitted which may obstruct free traffic flow, constitute a nuisance or otherwise create a safety hazard. Any vehicle parked within a fire lane may be towed without prior notice. The Board may impose additional parking Regulations for the Association Property, including without limitation, designating disabled, visitor, loading, vanpool, carpool and no parking areas.

2.4.5 The Board may enforce all parking and vehicle use Regulations applicable to the Association Property, including removing violating vehicles from the Association Property pursuant to California Vehicle Code Section 22658 or other applicable ordinances or statutes. In addition, in the event that the Board determines, after Notice and a Hearing, that any enforcement action is required pursuant to this Section, the Board may impose a Special Assessment on the Condominium Unit of the Owner whose violation, or whose Permittee's violation, has resulted in enforcement action in an amount equal to the reasonable cost to the Association of the applicable enforcement action.

2.5 **FURTHER SUBDIVISION OR PARTITION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide a Condominium in any manner, unless approved in writing by the Board. This provision does not limit the right of an Owner to (a) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as Association Property; (b) sell such Owner's Condominium; or (c) rent or lease all such Owner's Condominium by a written lease or rental agreement subject to this Declaration; provided, however, that such written lease or rental agreement must provide that any failure by the tenant of the Condominium to comply with the

restrictions shall constitute a default under such lease or rental agreement. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration, nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition. No Condominium in the Project may be partitioned or subdivided without the written approval of the Mortgagee of any First Mortgage on that Condominium.

2.6 LOADING FACILITIES. All temporary loading and unloading activities shall be conducted from designated loading areas within the Association Property, subject to such reasonable restrictions as may be imposed by the Board (including, without limitation, restrictions on the maximum duration of loading and unloading activities within the Association Property or the hours during which such activities occur). Without limiting the foregoing, no loading and unloading activities shall be conducted in any manner which may obstruct free traffic flow during normal business hours or otherwise constitute a nuisance or create a safety hazard.

2.7 OUTSIDE STORAGE. No Owner shall use any Association Property for storage purposes. No Owner shall allow any personal property belonging to such Owner to remain within any portion of the Association Property except as may otherwise be permitted by the Board or the Rules and Regulations.

2.8 DRAINAGE. There shall be no interference with the established drainage pattern over the Project, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board pursuant to ARTICLE VI. For the purpose hereof, "established" drainage is defined as the drainage shown on the grading and drainage plan approved by the City, or that which is shown on any plans approved by the Board.

2.9 ROOF-MOUNTED EQUIPMENT; SCREENING. Subject to prior approval of Declarant or the Board, as applicable, pursuant to ARTICLE VI below and compliance with all applicable Governmental Requirements, each Owner shall have the right to install (1) such HVAC equipment and other mechanical equipment on the roof of the Building above such Owner's Unit as may be reasonably necessary to provide ventilation for and other utility services to such Owner's Unit and (2) a solar heating or solar power system serving their Unit and located on the portion of the roof of the Building above such Unit. Without limiting the foregoing, but subject to the prior approval of the Board and compliance with any Rules and Regulations adopted by the Board related thereto, each Owner shall further have the right to install antennas or other transmission equipment on the roof of the Building above such Owner's Unit provided that (i) such transmission equipment shall be used for the sole purpose of transmitting or receiving video, audio or data for the benefit of the occupants of such Unit, (ii) such transmission equipment shall comply with all applicable Governmental Requirements and (iii) such transmission equipment shall not emit any noise or electro-mechanical or electro-magnetic disturbance radiation that would interfere with uses or activities conducted on any other portion of the Project. All antennas and other mechanical equipment placed on the roof of the Building shall be screened from view from outside the Building. All screening material shall be compatible with the materials used on the exterior of the Building.

2.10 SIGNS.

2.10.1 **General Requirements.** All Signs displayed anywhere within the Project must comply with (i) all applicable laws and regulations governing the type of advertising permitted of the Owner by all licensing authorities with jurisdiction over the Project or the applicable Owner, (ii) the terms of this Declaration and any Rules and Regulations adopted by the Association pursuant thereto and (iii) the Sign Program (if any) for the Project. Notwithstanding the foregoing, the Sign Program (if any) shall not regulate the content of political signs; provided however, that the Sign Program may regulate the time, place and manner of posting of such signs. Any sign erected, hung, flown or maintained on or over the Association Property or shown or displayed from or visible from the outside of any Unit shall be subject to the prior written approval of Declarant or the Board; provided, however, that Board approval shall not be required to show or display any sign or notice of customary and reasonable dimension and location (provided such sign otherwise complies with the Sign Program) which states that a Condominium is for rent or sale, or to display any signs that may be required by a legal proceeding. The Board may summarily cause all unauthorized signs to be removed or destroyed. Board approval of a sign shall not affect an Owner's independent duty to comply with any review or permit requirements of the City prior to sign installation.

2.10.2 **Monument Signage.** As of the date of recordation of this Declaration, there is a single monument Sign located within the Association Property, which includes space for four (4) sign panels on each of its two sides, for a total of eight (8) sign panels; each of the four (4) Owners shall have the right to install one (1) sign panel on each of the two sides of said monument Sign (2 signs panels per Owner). The Association Property shall further have the right, but not the obligation, to construct, maintain and control one (1) or more additional monument Signs in the Association Property, and the space for panels thereon shall be allocated among the Owners in accordance with the allocation described in the preceding sentence. Any panels installed on the Association's monument Signs shall be designed, constructed, installed and maintained at the sole expense of the Owner of the benefitted Unit.

2.11 **WATER QUALITY PROTECTION.** To protect the quality of our nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the City and County, and any Storm Water Pollution Prevention Plan covering the Project. Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. Each Owner and the Association (i) shall comply with, and cause its contractors to comply with, all such governmental requirements and the requirements of any other applicable governmental agency regarding the use, storage and disposal of toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, plant clippings and waste, detergents, pet waste, pesticides, fungicides, herbicides, insecticides, fertilizers and other Hazardous Materials, and (ii) shall not discharge or permit any of the foregoing to be disposed in the Project or discharged into any street, gutter,

storm drain or storm water conveyance system. Owners and the Association should consult with the City, other governmental authorities, and their refuse hauler regarding the proper disposal of any Hazardous Materials. Each Owner and the Association shall indemnify, protect, defend and hold Declarant and its officers and directors harmless from any and all claims, liability, actions, penalties or damages (including attorney's fees, experts' fees and costs) arising from or attributable to the Owner's or Association's failure to comply with the requirements of this Section.

2.12 ENVIRONMENTAL COMPLIANCE. Each Owner shall comply, and shall ensure that all of its Permittees comply, with all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of Hazardous Materials in, on, above, under or otherwise affecting the Project.

2.13 AIRPORT INFLUENCE AREA NOTICE. This property is presently located in the vicinity of airports, including the John Wayne Airport (Orange County Airport), within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

ARTICLE III **THE ASSOCIATION**

3.1 GENERAL DUTIES AND POWERS. The Association has the duties and powers listed in the Governing Documents and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles, Bylaws or this Declaration, the powers of the Association may be exercised by the Board.

3.2 SPECIFIC DUTIES AND POWERS. In addition to its general powers and duties, the Association has the following specific powers and duties.

3.2.1 Association Property. The power and duty to accept, maintain and manage the Association Property in accordance with the Governing Documents. The Association may install or remove capital Improvements on or within the Association Property. The Association may reconstruct, replace or refinish any Improvement on or within the Association Property.

3.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Association Property, all commonly-metered water, electricity, gas, sewer and other utility services. This includes the power and duty to obtain water utility services to serve all the Units in light of the fact that as of the date of this Declaration, there is a single water meter serving the entire Project. However, the Association shall have no obligation to provide any utilities for the exclusive use of some, but not all, of the Units within the Project.

3.2.3 **Trash; Janitorial Services.** The power and duty to provide trash collection services from any common trash enclosures within the Association Property, and the power but not the duty to provide for janitorial services to the Units within the Project.

3.2.4 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Association Property, to the extent any such grant is reasonably required for either (a) utilities and facilities to serve the Association Property and the Units, (b) purposes of conformity with the as-built location of Improvements within the Project as of the Recordation hereof or as otherwise installed by or on behalf of Declarant or the Association, or (c) other purposes consistent with the intended use of the Project. This power includes the right to create and convey easements over the Association Property for Exclusive Use Areas subject to the conditions set forth in Section 7.2.2.

3.2.5 **Employ Personnel.** The power to employ a Manager and any other Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

3.2.6 **Insurance.** The power and duty to maintain insurance for the Association Property and any other insurance contemplated by ARTICLE IX below.

3.2.7 **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations and the Architectural Guidelines.

(a) ***Declarant Rights.*** Nothing herein shall limit Declarant's right to unilaterally impose Rules and Regulations and/or Architectural Guidelines on the Project prior to the Declarant Rights Termination Date.

(b) ***Effective Date.*** All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Project or (ii) sent to the Owners via first class mail or by any system or technology designed to record and communicate messages.

(c) ***Areas of Regulation.*** The Rules and Regulations may concern use of the Project, and any other matter within the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws and this Declaration.

(d) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious and holiday signs, symbols and decorations within their Units of the kinds normally displayed in commercial offices shall not be abridged, except the Association may adopt time, place and manner restrictions with respect to any such displays visible outside of the Unit in which they are located. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in a Unit prior to the adoption of such modification if such personal property was in compliance with all Rules and Regulations previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Condominium and shall not apply to (i) subsequent Owners who take title to the Condominium after the modification is adopted, (ii) clarifications to the Rules and Regulations or (iii) violations of any Hazardous Materials Laws or other applicable Governmental Requirements.

(e) **No Liability.** Neither Declarant nor the Association shall be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, on account of the establishment, amendment, restatement, deletion, and/or waiver of any Rules or Regulations and/or Architectural Guidelines in accordance with this Section 3.2.7.

3.2.8 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws and this Declaration and in connection therewith, to pledge or assign any personal property of the Association (including, without limitation, any right to impose Assessments pursuant to this Declaration) as security for any such borrowing.

3.2.9 **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Project and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration.

3.2.10 **Reconstruction.** The power, but not the duty (except as otherwise expressly set forth in ARTICLE X below) to reconstruct, replace or refinish any Improvements or portions thereof located on the Project.

3.2.11 **Indemnification.**

(a) **For Association Representatives.** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, and all Association committee members (each, an "**Authorized Person**") for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such Authorized Person reasonably believed to be the scope of the Authorized Person's Association duties ("**Official Act**"). Board members, Association officers, and all Association

committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Authorized Person entitled to such indemnification.

(b) ***For Other Agents of the Association.*** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) ***Provided by Contract.*** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

3.3 **PROHIBITED ACTIVITIES.**

3.3.1 **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Project (e.g., endorsement or support of (a) legislative or administrative actions by a local governmental authority, (b) candidates for elected or appointed office, or (c) ballot proposals); or (ii) conduct, sponsor, participate in or expend funds or resources for any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. Any amendment of this Section prior to the Declarant Rights Termination Date shall require Declarant's approval.

3.3.2 **Declarant Rights.** The Association is prohibited from taking any action which is inconsistent with, or which would abrogate, any right or exemption in ARTICLE XVII.

3.4 **STANDARD OF CARE, NONLIABILITY.**

3.4.1 **Scope of Powers and Standard of Care.**

(a) ***General Scope of Powers.*** Rights and powers conferred on the Board or committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or under applicable law. Unless a duty to act is imposed on the Board or committees or representatives of the Association by the Governing Documents or applicable law, the Board and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) ***Business Affairs.*** This Section 3.4.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances of the Association. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing duties on behalf of the Association, a Board member is entitled to rely on information, opinions, reports or statements, including financial data, prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 3.4.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 3.4.1(b).

(c) ***Association Governance.*** This Section 3.4.1(c) applies to Board actions and decisions in connection with interpretation and enforcement of the Governing Documents, regulation of uses within the Project, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

3.4.2 **Nonliability.**

(a) ***General Rule.*** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's gross negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Project unless caused by the gross negligence of the

Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) ***Nonliability of Volunteer Board Members and Officers.*** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member.

(c) ***Nonliability of Owners.*** Pursuant to California Civil Code Section 6840, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 6840 and that insurance is in effect for the cause of action being brought.

3.5 MEMBERSHIP.

3.5.1 **Generally.** Every Owner of a Condominium within the Project shall, upon the Close of Escrow for its acquisition of such Condominium, automatically become a Member of the Association and shall remain a Member thereof until ownership of the Condominium ceases. Ownership of a Condominium is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Condominium. The rights, duties, privileges and obligations of all Owners are as provided in the Governing Documents.

3.5.2 **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. The Association shall have the right to rely on evidence of Record title to a Condominium for purposes of determining the Person entitled to exercise the Membership rights appurtenant to ownership of such Condominium; provided however, that any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. Any such delegation to a contract purchaser prior to transfer of Record title to the applicable Condominium must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall, at the election of the Board, be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records.

3.6 VOTING RIGHTS.

3.6.1 **Classes of Voting Membership.** The Association shall have two (2) classes of voting membership as follows:

(a) **Class A.** Class A Members shall be all Owners with the exception of Declarant. The voting power of each Class A Member in the Association shall be that number of votes equal to the number of Assessment Units assigned to such Member's Unit pursuant to Section **Error! Reference source not found.** below.

(b) **Class B.** Declarant shall be the Class B Member and shall be entitled to ten (10) times the voting power attributable to each Condominium owned by Declarant, as computed in accordance with the preceding paragraph. Declarant shall further have the ability to appoint all of the directors on the Board during the pendency of its Declarant Voting Rights as such term is used in the definition of Declarant.

3.6.2 **Joint ownership.** When more than one (1) Person holds an interest in any Condominium ("**co-owners**"), each co-owner may attend any Association meeting, but only one (1) such co-owner shall be entitled to exercise the votes allocated to that Condominium. Co-owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the votes allocated to each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the votes for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of all co-owners of such Condominium. No votes may be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting allocations established in the Governing Documents are binding on all Owners and their successors in interest.

ARTICLE IV

MAINTENANCE OBLIGATIONS, UTILITIES AND OTHER SERVICES

4.1 MAINTENANCE OF ASSOCIATION PROPERTY

4.1.1 **Project Components to be Maintained by Association.** Upon commencement of Annual Assessments, the Association shall be responsible for the operation and maintenance of those portions of the Association Property and other components of the Project specified in **Exhibit B** attached hereto (the "**Association Maintenance Items**"). The Association shall be further responsible for repairing any

Owner Maintenance Item which is damaged as a result of the gross negligence or willful misconduct of the Association or its agents. Except as expressly set forth in the preceding sentence, the Association shall have no obligation to restore any Owner Improvements which have been installed by that Owner.

4.1.2 Association Maintenance Standards. The Association shall maintain the Association Maintenance Items in a clean, safe, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget for the Association. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Maintenance Items. Each Owner shall immediately notify the Association of any dangerous, defective or other condition within any Association Maintenance Item which could cause injury to Person or property within such Owner's Unit or the Association Property adjacent thereto.

4.1.3 Delegation of Association Maintenance Obligations. Notwithstanding anything to the contrary set forth in this Declaration, the Association shall have the right to delegate its maintenance responsibilities under this Section 4.1 to a professional Manager (which may be Declarant or a party affiliated with Declarant) selected by the Board pursuant to Section 3.2.5 above to operate the Association Property and perform maintenance of the Association Maintenance Items on behalf of the Association.

4.1.4 Additional Items. The Association may, subject to approval by a majority of the voting power of the Association, designate additional components of the Project for maintenance by the Association. Upon any such designation, such component of the Project shall be deemed to be Association Property and subject to the provisions of this Declaration applicable thereto.

4.1.5 City Enforcement Rights. The covenants, conditions and restrictions of this Declaration shall run to the benefit of the City of Costa Mesa insofar as they shall apply to the maintenance of the Association Property as defined herein. In the event the Association or other legally responsible person(s) fails to maintain the Association Property in such manner as to cause same to constitute a public nuisance, the City may, upon proper notice and hearing, institute summary abatement procedures and impose a lien for the costs of such abatement upon the Association Property, individual Units, or the whole thereof as provided by law.

4.2 MAINTENANCE OBLIGATIONS OF OWNERS

4.2.1 Project Components to be Maintained by Owner. Each Owner, at its sole cost and expense, subject to the provisions of this Declaration, shall be solely responsible for maintaining, repairing, replacing and restoring those components of the Project more particularly set forth in *Exhibit C* attached hereto (the "**Owner Maintenance Items**"). Without limiting the foregoing, each Owner shall maintain any Owner Improvements installed by or on behalf of such Owner or its Permittees within such Owner's Unit or the Association Property appurtenant thereto. Each Owner shall be

responsible for any and all pest and rodent control and treatment relating to their Unit, Exclusive Use Area and their Owner Improvements. If anything an Owner is obligated to maintain causes damage to any other Unit or the Association Property, the Owner is responsible for paying the cost of repairs. Neither the Association nor any Owner is responsible for paying consequential damages. Notwithstanding the foregoing, any maintenance activities to be conducted by an Owner which would constitute a Proposed Alteration subject to the provisions of ARTICLE VI below shall remain subject to compliance with the provisions thereof.

4.2.2 Owner Maintenance Standards. Each Owner's Unit and any other Owner Maintenance Item to be maintained by such Owner shall be maintained in a neat, sanitary, safe and attractive condition and otherwise in accordance with applicable Governmental Requirements and any and all Rules and Regulations (including the Architectural Guidelines) adopted by the Association pursuant to the terms of this Declaration. Without limiting the foregoing, the Association shall have the right, but not the duty, to disapprove any contractors or subcontractors engaged by an Owner to perform maintenance of any Owner Maintenance Item to the extent that the failure to perform such maintenance in a good and workmanlike-manner could have a material, adverse effect on the Association Property or any other Unit within the Project.

4.2.3 Environmental Compliance. Each Owner shall comply, and shall ensure that all of its Permittees comply, at all times with all Hazardous Materials Laws applicable to the Project and shall, subject to Section 12.2, protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, Managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with any violation of Hazardous Materials Laws occurring within such Owner's Unit or, to the extent arising from actions of such Owner or any Permittee thereof, within the Association Property.

4.2.4 Failure to Maintain. If any Owner shall permit an Owner Maintenance Item to be maintained by such Owner to fall into disrepair or to become unsafe, unsightly or unattractive, or otherwise fails to maintain any such Owner Maintenance Item in accordance with this Declaration, the Association shall have the right to seek any remedies which it may have at law or in equity. In addition, the Association shall have the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Unit to make such repairs or to perform such maintenance; provided, however, that in the event the Board reasonably determines that such Owner Maintenance Item requires immediate maintenance to avoid a material threat of imminent injury or damage to property or that the condition of such Owner Maintenance Item otherwise constitutes an emergency situation, the Association may perform the maintenance immediately. Without limiting the foregoing, if any Owner fails to maintain any Owner Improvements installed by or on behalf of such Owner or its Permittees within such Owner's Unit or the Association Property and the Association determines that the Owner Improvement in its then-current condition significantly interferes with the Association's ability to fulfill its maintenance

obligations pursuant to Section 4.1 above, or otherwise poses a material risk of damage or injury to any persons or property within any other portion of the Project, the Association shall have the right to remove the Owner Improvement at the cost of such Owner. Any cost incurred by the Association in performing maintenance or repair to any Owner Maintenance Item or removing any Owner Improvement shall be charged to the Owner responsible for such Owner Maintenance Item or Owner Improvement. Said cost shall be a Special Assessment enforceable as set forth in this Declaration.

4.3 DISPUTES REGARDING MAINTENANCE OBLIGATIONS. If a dispute arises between Owners or between an Owner and the Association regarding any maintenance obligation, the Board, in its reasonable discretion, shall determine who is responsible for the maintenance obligation and that decision shall be binding on the Association and all Owners.

4.4 TRASH REMOVAL. Each Owner shall be solely responsible for ensuring that all trash generated by the Owner and any Permittee of such Owner's Unit is either stored within such Unit in a clean, sanitary and safe manner or placed in trash receptacles located within the Association Property as designated by the Board. Notwithstanding the foregoing, in no event shall the Owner of any Unit or any Permittee thereof deposit any trash or other materials within such trash receptacles except in strict compliance with all applicable Hazardous Materials Laws and other Governmental Requirements, and each Owner shall indemnify the Association for any violation thereof by such Owner or its Permittee as more particularly set forth in Section 4.2.3 above. Without limiting the foregoing, in no event may any Owner or its Permittee deposit any trash or other materials into the trash receptacles within the Association Property which is generated from any source or use other than the use and occupancy of such Owner's Unit. The Association shall provide trash removal services from such common trash receptacles as often as the Board deems reasonably necessary, but in no event less than once per week.

ARTICLE V **PAYMENT OF PROPERTY TAXES**

5.1 REAL PROPERTY TAXES AND ASSESSMENTS. Each Owner shall pay, or cause to be paid, when due, all real estate or personal property taxes and Assessments which may be levied, assessed, or charged by any public authority against the Owner's Condominium or any other part thereof or any Owner Improvements installed therein. If an Owner shall claim that any property tax or assessment (including the rate thereof or the assessed valuation of the property) is excessive or illegal, the Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings. Nothing contained in this Article shall require an Owner to pay any real property tax or assessment as long as (a) no other Owner's Condominium or the Association Property would be immediately affected by such failure to pay; and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay such real property tax or assessment affects another Owner's Condominium or the Association Property, the other Owner or the Association may demand that the nonpaying Owner post an appropriate bond to secure payment of the delinquent taxes pending resolution of the proceedings to contest the tax. If such a bond is not posted within ten (10) days after receipt of such demand by the nonpaying Owner, the Association shall have the right, but not the obligation, to pay such tax and shall have a lien on the nonpaying Owner's Condominium for the amount so paid until

reimbursed. Any such lien shall be subject and junior to, and shall in no way impair or defeat, a lien or charge of any Mortgagee.

5.2 **UNSEGREGATED REAL PROPERTY TAXES.** In the event that real estate taxes on any of the Condominiums within the Project are not separately assessed as of the close of escrow for the sale of such Condominium, each Owner shall take such action as may be reasonably necessary to obtain separate real estate tax assessment of such Condominium. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and Assessments levied on the Project. If all Condominiums in the Project are taxed under a tax bill covering the entire Project, then each Owner shall pay their share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes among the Owners and their Condominiums in the Project, based on the number of Assessment Units allocable to each such Condominium pursuant to Section **Error! Reference source not found.** below. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay their share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay their share. The Association shall impose a Special Assessment on the Condominium of any delinquent Owner in an amount equal to any sum advanced by the Association pursuant to this Section 5.2, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of their share of the taxes.

ARTICLE VI **ARCHITECTURAL CONTROL**

6.1 ARCHITECTURAL CONTROL REQUIREMENTS.

6.1.1 **Alterations to Association Property.** Except as expressly set forth in this ARTICLE VI, no Improvement or work which alters or adversely affects the Association Property shall be made or done by any Person other than the Declarant or the Association. No Owner may perform any alterations to the Exclusive Use Area appurtenant to such Owner's Unit without the consent of Approving Authority (as defined in Section 6.2.2 below) in its sole discretion. Notwithstanding the foregoing, but subject to compliance with the provisions of this ARTICLE VI and all applicable Governmental Requirements, each Owner may modify the Owner's Unit, the Exclusive Use Area appurtenant thereto and the route over the Association Property leading to the front entrance of the Owner's Unit, at the Owner's sole expense, to facilitate access to the Owner's Unit by Persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons in accordance with California Civil Code Section 6714 or any other applicable law.

6.1.2 Alterations to Owner Improvements. No Owner shall permit or cause any exterior portion of such Owner's Unit, or any additional Improvements located therein (collectively, "**Owner Improvements**") to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "**Proposed Alteration**") unless such Proposed Alteration conforms to all applicable Governmental Requirements, the Sign Program and any Architectural Guidelines which may be adopted by the Board from time to time pursuant to Section 6.2 below. The architectural control provisions of this Declaration require that any exterior Improvement or other structures to be altered, erected or maintained within the Project must first be approved by the Approving Authority. Without limiting the foregoing, the following Proposed Alterations shall further require the approval of the "Approving Authority" as is defined below:

- (a) any Proposed Alterations which would be visible from outside the Building, including, without limitation, any signs;
- (b) any Proposed Alterations which would materially increase the load on any utility services provided by the Association or otherwise adversely impact any Common Utility Improvements installed within the Project for the delivery of such utility services;
- (c) any Proposed Alterations that would cause an increase in the cost of insurance to be carried by the Association or the Owner of any other Unit within the Project pursuant to ARTICLE IX below;
- (d) any Proposed Alterations that would affect the parking requirements of a Unit under applicable Governmental Requirements; and
- (e) any other Proposed Alteration which would materially, adversely impact the use and occupancy of any other Owner's Unit within the Project (other than temporary, minor impacts resulting from construction activity related to the performance of such Proposed Alteration).

6.1.3 Identical Replacements. Approving Authority consent shall not be required for the restoration or replacement of any Owner Improvement which will be substantially identical to the original Improvements located within the Unit at the time the Owner acquired the Unit or any Owner Improvement subsequently installed within the Unit but previously approved by the Approving Authority pursuant hereto.

6.1.4 Declarant Exempt. Notwithstanding any other provision of the Governing Documents, Declarant need not obtain approval from the Approving Authority with respect to its construction or development activities within the Project prior to initial completion thereof.

6.1.5 City Regulation and Approval. Without limiting the foregoing, each Owner shall be responsible for obtaining the prior written approval of the City, to the extent that such is required for any Proposed Alteration. The City of Costa Mesa Zoning Code regulates the uses of property, allowable signage, and required parking. The City shall not issue a building permit or a sign permit unless it is first authorized by the

Association. This authorization shall be submitted with any application to the City. This provision may not be modified without the written consent of the City.

6.2 APPROVAL STANDARDS.

6.2.1 **Architectural Guidelines.** Declarant and, following the Declarant Rights Termination Date, the Board may, in its reasonable discretion, adopt guidelines (the “*Architectural Guidelines*”) regarding architectural standards for Proposed Alterations to be constructed by or on behalf of any Owner within the Project. Such Architectural Guidelines may include, without limitation, reasonable restrictions on the conduct of construction activity within the Project so as to minimize damage to Association Property and/or other Units and any other adverse impacts on the use and occupancy of other Units within the Project.

6.2.2 **Architectural Approval Authority.** Prior to the Declarant Rights Termination Date, Declarant shall be the “Approving Authority” for purposes of exercising all approval, inspection and enforcement rights set forth in this ARTICLE VI. Notwithstanding the foregoing, Declarant shall have the right to delegate its rights as Approving Authority to the Board at any time prior to the Declarant Rights Termination Date. Upon any such delegation, but in any event from and after the Declarant Rights Termination Date, the Board shall be the Approving Authority for purposes of this ARTICLE VI; provided, however, that the Board may appoint a committee of Members of the Association (the “*Architectural Review Committee*”) and delegate to such Architectural Review Committee its authority hereunder. From and after any such delegation, the Architectural Review Committee shall be deemed to be the Approving Authority hereunder. The Board shall further have the power, but not the duty, to retain Declarant or any other Persons to advise the Approving Authority in connection with the review, approval and/or inspection of any Proposed Alterations pursuant to this ARTICLE VI.

6.2.3 **Basis of Approval.** The Approving Authority may disapprove any submittals hereunder if it determines in its sole discretion that the Proposed Alteration will (a) adversely affect the integrity of the structural, mechanical, electrical or fire/life safety systems in the applicable Building, (b) increase insurance or utility costs for the Association or any other Owner, (c) materially adversely affect the use or occupancy of any other Owner’s Unit, or (d) is not otherwise in harmony or conformity with the Project, applicable Governmental Requirements, this Declaration and/or any Architectural Guidelines adopted pursuant hereto.

6.2.4 **Preapproval.** The Approving Authority may pre-approve certain types or classes of construction activities if, in the exercise of its reasonable judgment, preapproval of such types or classes of Proposed Alterations is appropriate in carrying out the purposes of the Governing Documents.

6.2.5 No Waiver of Future Approvals. Approval of any proposals, plans and specifications or drawings for any Proposed Alterations by the Approving Authority shall not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

6.2.6 Exculpation. Neither the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Proposed Alterations pursuant to this ARTICLE VI, shall be liable in damages to anyone making submittals as provided herein, or to any Owner, or other Person subject to or affected by this Declaration, on account of (a) the approval or disapproval of any submittal; (b) any construction, performance or nonperformance by an Owner of any work relating to or arising from a Proposed Alteration, whether or not pursuant to approved submittals; (c) any mistake in judgment, negligence, action or omission in the Approving Authority's exercise of its rights, powers and duties hereunder; or (d) the enforcement of or failure to enforce any of these Governing Documents. Every Person who makes submittals for approval of a Proposed Alteration agrees by reason of such submittal, and every Owner of a Condominium agrees by acquiring title to any Condominium or an interest therein affected by such Proposed Alteration, not to bring any suit or action against Declarant, the Association or the Approving Authority or any Person retained by any of the foregoing in connection herewith seeking to recover any such damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, the Association or the Approving Authority with respect to the accuracy or sufficiency of the submittal.

6.3 REVIEW PROCESS.

6.3.1 Initial Submittals. In order to obtain approval of any Proposed Alteration, each Owner shall be required to deliver the following submittals to the Approving Authority:

- (a) Two (2) sets of basic conceptual drawings;
- (b) Two (2) sets of schematic plans and preliminary specifications, consistent with the previously-approved basic conceptual drawings; and
- (c) Two (2) sets of final working drawings and specifications, based on approved basic design concepts and schematic plans and preliminary specifications, including, but not limited to structural and mechanical calculations, if applicable, electrical plans, if applicable, color and material palette and signage, shall be submitted before commencement of any Proposed Alterations.

6.3.2 Preparation of Submittals. Unless waived by the Approving Authority, all plans and specifications submitted shall be prepared by an architect or engineer licensed to practice in California, and signed by the Owner or by an agent authorized by the Owner in writing.

6.3.3 **Partial Submittals.** Partial submittals may be made and approved, but construction or assembly of any Proposed Alteration may not proceed beyond the scope of the approval received.

6.3.4 **Waiver of Submittal Requirements.** The Approving Authority may waive the requirement for any submittal identified in this Section 6.3 in the sole discretion thereof.

6.3.5 **Architectural Review Fee.** As a condition of review of submittals by the Approving Authority, the Association may charge a reasonable architectural review fee to be paid at or before the time preliminary plans and specifications are submitted for approval to cover overhead and other costs of reviewing the submittals.

6.4 **APPROVALS.** If the Approving Authority approves a submittal, it shall endorse its approval on one set of submitted documents and return the set to the Person from whom the documents were received. The Approving Authority shall be conclusively deemed to have given its approval to a submittal unless within twenty-five (25) business days after such submittal has been received, it delivers written notice specifying in reasonable detail each item which has been disapproved or requesting additional information in order to reach a decision.

6.5 **CONTRACTOR REQUIREMENTS.** The Approving Authority shall have the right, but not the duty, to require as a condition to approval of any Proposed Alteration that the contractors or subcontractors to be engaged by the responsible Owner to perform any construction, installation or other services required in connection with the Proposed Alteration (collectively, the “*Work*”) provide to the Association, prior to commencing Work within the Project, proof of any workers’ compensation insurance coverage required by law as well as commercial general liability insurance coverage against any claims or liabilities arising from the performance of the Work or other activities of such contractor or subcontractor on the Project in connection therewith in an amount satisfactory to the Association in its reasonable discretion. The Association shall further have the right to require all such contractors and subcontractors to deliver certificates of insurance for the foregoing commercial general liability insurance naming the Association as an additional insured thereunder. Without limiting the foregoing, the Association shall have the right, but not the duty, to disapprove any contractors or subcontractors engaged by an Owner to perform Work within the Project to the extent that the failure to perform such Work in a good and workmanlike-manner could have a material, adverse effect on the Association Property or any other Unit within the Project.

6.6 **COMMENCEMENT AND COMPLETION OF PROPOSED ALTERATIONS.** Unless otherwise specified by the Approving Authority in its approval of a submittal, each Owner shall have a period of six (6) months after the date both the City and the Approving Authority have approved the submittal within which to commence such Proposed Alteration in accordance with the approval; provided, however, that in all cases work must commence within eighteen (18) months after approval by the Approving Authority. Each Owner shall give the Approving Authority at least fifteen (15) days prior written notice of the commencement of any Proposed Alteration. Approval of a submittal shall expire eighteen (18)

months after the date such approval is given. If an Owner fails to commence the work covered by such submittal in accordance with the approved document or documents within such period, any previous approvals for such work shall be invalid, and the Owner shall be obligated make a new submittal prior to commencing such work of Improvement. After a Proposed Alteration is commenced by an Owner, such Owner shall diligently pursue such Proposed Alteration to completion.

6.7 REMOVAL OF LIENS. No Owner shall permit any mechanics, or materialmens, or other similar liens to be created or maintained against any Condominium within the Project to which labor or material has been performed or furnished in connection with the construction of a Proposed Alteration. An Owner may post a bond and contest any such lien at the Owner's sole expense.

6.8 INSPECTION OF WORK. The Approving Authority or its duly-authorized representative shall have the right, but not the duty, to inspect any Work for which its approval is required under this Article. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with applicable approvals of the Work or with the requirements of the Governing Documents ("**Noncompliance**").

6.8.1 Time Limit. The right of the Approving Authority to inspect the Work and notify the responsible Owner of any Noncompliance pursuant to Section 6.8 shall terminate sixty (60) days after the Approving Authority has received written notice from the Owner that the Work has been completed and the Work has, in fact, been completed.

6.8.2 Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of written notification of noncompliance, the Board may Record a notice of Noncompliance (if allowed by law) and commence an alternative dispute resolution procedure or a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

6.9 CERTIFICATE OF COMPLIANCE. Upon completion of the Proposed Alteration, whether or not the Approving Authority has exercised its right to inspect the Proposed Alteration pursuant to Section 6.8 above, the performing Owner shall, upon request by the Approving Authority, supply it with a certification by a licensed or registered architect or engineer that the Proposed Alteration has been completed in accordance with the final working drawings and specifications previously approved by the Approving Authority.

6.10 PRESUMPTION OF COMPLIANCE. Upon expiration of one (1) year after either (a) the date the City issued a final permit approval or certificate of occupancy for any Unit in which Proposed Alterations have been performed, if applicable, or (b) the Recording date of a valid notice of completion with respect to such Proposed Alteration, the Proposed Alteration shall, in favor of purchasers and Mortgagees in good faith and for value without knowledge of the noncompliance and noncompletion, be deemed to be in compliance and completed in accordance with all provisions of this ARTICLE VI, unless either (i) an actual notice of

noncompliance or noncompletion thereof executed on behalf of the Association is Recorded, or (ii) legal proceedings are instituted by the Association to enforce compliance or completion.

ARTICLE VII
PROPERTY EASEMENTS AND RIGHTS

7.1 OWNER EASEMENTS.

7.1.1 Owner's Easements in Association Property. Declarant reserves and establishes, for the benefit of every Owner, their tenants and guests, a nonexclusive easement for access, ingress, egress, use and enjoyment of, in and to the Association Property in connection with the use and enjoyment of each Condominium in the Project. This easement is appurtenant to and passes with title to every Condominium in the Project. This easement is subject to all other rights and easements set forth in the Governing Documents, including without limitation the following:

(a) Easements as shown on any Recorded subdivision map or parcel map of the Project, and any other easements now or hereafter recorded against the Project (including without limitation, any easements reserved in the deed or other instrument conveying recorded title to the Project to Declarant).

(b) The Association's exercise of its powers granted hereunder.

(c) The Association's right to consent to or otherwise cause the repair, replacement, alteration or removal of any existing Improvements on the Association Property and to consent to or otherwise cause the construction of additional Improvements on the Association Property, in each case for the benefit of the Owners or for other purposes consistent with the intended use of the Project as a business condominium project;

(d) The Association's right to reasonably restrict access to sensitive landscaped areas, maintenance facilities and other areas of the Association Property (including, without limitation, portions of the Association Property containing Exclusive Use Area);

(e) Any Rules and Regulations pertaining to the use of the Association Property which may be adopted from time to time by Declarant and/or the Board pursuant to the provisions of this Declaration;

(f) The Association's right to grant, consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Association Property for purposes consistent with the intended use of the Project;

(g) The right of the other Owners to install utilities within the Association Property on the terms set forth in Section 7.1.2 below;

(h) The rights and reservations of Declarant set forth in this Declaration; and

(i) Any other easements reserved or established pursuant to this ARTICLE VII.

7.1.2 Utility Easements. Declarant reserves and establishes for the benefit of the Owners, easements over the Association Property for purposes of installing, repairing and maintaining utility improvements, heating, ventilating and air conditioning, and telecommunications systems which serve such Owners' Units; provided, however, that no such utility improvements, heating, ventilating and air conditioning, and telecommunications systems or any wires, conduits, or other facilities or equipment related thereto may be installed within any other Owner's Unit.

7.1.3 Maintenance and Repair Easements. Declarant reserves and establishes for the benefit of the Owners easements over the Association Property for purposes of maintaining and repairing any Owner Maintenance Items as required pursuant to Section 4.2 above; provided however, that the foregoing easement shall not be deemed to relieve any Owner from the obligation to comply with the provisions of ARTICLE VI above to the extent applicable to any maintenance or repair to be conducted by or on behalf of such Owner.

7.1.4 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Association Property may delegate those rights and easements in writing to their tenants, contract purchasers or subtenants using such Owner's Condominium, subject to reasonable notification and regulation by the Board. An Owner who has delegated such right and easement may not use or enjoy the facilities or equipment of the Project for so long as such delegation remains in effect. No Owner may exempt themselves from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Association Property or by abandoning such Owner's Condominium.

7.2 ASSOCIATION EASEMENTS.

7.2.1 Association Maintenance and Repair. Declarant reserves and establishes for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Project (including the Units) for purposes of access, inspection and maintenance as necessary to fulfill the obligations and perform the duties of the Association pursuant to the Governing Documents, including the maintenance obligations set forth in **Exhibit B**. Without limiting the foregoing, but subject to Section 7.5 below, Declarant further reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over each of the Units for purposes of satisfying any maintenance obligations of the Owner of such Unit pursuant to Section 4.2 above or otherwise enforcing, by peaceful means, the provisions of this Declaration should the Owner of such Unit fail, after Notice and a Hearing, to perform such maintenance or remedy any other noncompliance with this Declaration.

7.2.2 Exclusive Use Area. Declarant reserves and establishes for the benefit of the Association the right to grant exclusive use easements over the Association Property for purposes of establishing Exclusive Use Areas for the benefit of the Owner or Permittees of any Unit adjacent thereto; provided however, that no such Exclusive Use Area shall materially, adversely interfere with the right of any other Owner to access, occupy or use its Unit or the Exclusive Use Area appurtenant thereto.

7.2.3 Utility Easements. Declarant reserves and establishes for the benefit of the Association easements over the Units within the Project for purposes of installing, repairing and maintaining Common Utility Improvements, the Association Property or the Units within the Project. Any entry by the Association into any Owner's Unit pursuant to this Section 7.2.3 shall further be subject to the provisions of Section 7.5 below.

7.3 DECLARANT EASEMENTS.

7.3.1 Construction License Over the Association Property. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors a construction license over portions of the Association Property as reasonably required for purposes of (a) completing any Improvement which Declarant considers desirable to implement Declarant's plan for development and sale of the Project, (b) complying with any applicable Governmental Requirements or (c) otherwise exercising any of the rights set forth in ARTICLE XVII below; provided however, that (a) the license reserved pursuant to this Section 7.3.1 shall not be exercised in such a manner as to interfere with the rights of other Owners to access their Units, and shall terminate as of the Declarant Rights Termination Date.

7.3.2 Inspection, Maintenance and Repair. Subject to Section 7.5 below, Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors nonexclusive easements for access, inspection, maintenance and construction purposes over, in or to the Units and the Association Property to inspect the Improvements constructed therein by or on behalf of Declarant and to perform any necessary maintenance, warranty work or other repair thereof. Any entry by Declarant into any Owner's Unit pursuant to this Section 7.3.2 shall further be subject to the provisions of Section 7.5 below.

7.3.3 Access Easement Over the Association Property. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees, contractors, customers and invitees a nonexclusive easement over the Association Property for (a) access, ingress, egress, use and enjoyment in connection with the promotion and marketing of the Project, including, without limitation, the sale, leasing or financing of Condominiums or all or any portion of the Improvements located thereon; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners established by this Declaration. Without limiting the generality of the foregoing, Declarant may erect and maintain Signs, use vehicles and equipment upon the

Association Property, place Signs on any Units owned by Declarant, and permit prospective purchasers, lessees and lenders to enter upon the Association Property as Declarant deems reasonably necessary in connection with the promotion or marketing of the Project. The foregoing easement shall terminate as of the Declarant Rights Termination Date.

7.4 MISCELLANEOUS EASEMENTS. Declarant reserves and establishes the following easements for the benefit of the Association, the Association Property, the Units and the Owners:

7.4.1 Encroachments. Declarant reserves, for its benefit and the benefit of the Owners and the Association, reciprocal easements appurtenant to the Association Property and each Condominium within the Project over the Units and the Common Property as necessary to accommodate (a) minor variances in the original construction or reconstruction of any Improvements constituting Association Property, (b) shifting, movement or natural settling of the Building which forms the boundary of each Unit, (c) any existing encroachment of any wall or any other Improvement authorized pursuant to this Declaration and (d) authorized construction or repair conducted pursuant to this Declaration. Use of the foregoing easements may not unreasonably interfere with the use and enjoyment of the burdened Condominium.

7.4.2 Easements for Public Service Use. Declarant reserves and establishes easements over the Project for public services, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Project for the purpose of carrying out their official duties.

7.4.3 Utilities and Communication Service. Declarant reserves the right to grant additional easements and rights-of-way over the Project to utility companies and public agencies, as necessary, for the proper operation of the Project. Declarant further reserves nonexclusive easements over the Project, as necessary for maintenance and repair of utility and communication services to the Association Property and the Units; including but not limited to, the right of any public utility or public water supplier of ingress and egress over the Units and the Association Property for purposes of servicing utilities within the Project, reading and maintaining meters, and using and maintaining fire hydrants located in the Project. The easements established or reserved pursuant to this Section 7.4.3 and the preceding Section 7.4.2 shall remain in effect and shall not be modified until the utility or public entity holding the beneficial rights to any such easement approves the termination or modification, as applicable, of such easement.

7.4.4 Easements on Maps. Easements as shown on any Recorded subdivision map or Recorded parcel map of the Project.

7.5 ENTRY TO UNITS.

7.5.1 **Prior Notice.** Any entry into a Unit by Declarant, the Association or any other Owner pursuant to the rights and easements reserved in this ARTICLE VII may be made only upon at least three (3) business days advance written notice (the “**Entry Notice**”) to the Owner of the Unit to be entered except for emergency situations, which shall not require advance notice. Upon receipt of such Entry Notice, the Owner of any Unit to be entered pursuant to this ARTICLE VII shall have the right to designate an alternative date and time for such entry reasonably convenient to the Owner or Permittees of the Unit to be entered provided that the designated date shall in no event be later than five (5) business days after delivery of the applicable Entry Notice. In the event that the Owner or Permittee of the Unit to be entered fails to designate an alternative date and time for such entry within three (3) business days after delivery of the Entry Notice, the party desiring to enter such Unit may enter the Unit at the date and time designated in the Entry Notice.

7.5.2 **Owner’s Right to be Present.** Without limiting the foregoing, the Owner of the Unit to be entered shall have the right to be present, or to have a designated representative present, during any entry into such Owner’s Unit pursuant to this ARTICLE VII. In the event that the Owner of the Unit fails to have a representative present at the date and time designated in the Entry Notice (or such alternative date and time as may be designated by the Owner of the Unit to be entered pursuant to the preceding paragraph), then such Owner shall be deemed to have waived its right to have a representative present during such entry.

7.5.3 **Conduct During Entry; Restoration.** Any entry into an Owner’s Unit by Declarant, the Association or any other Owner pursuant to the rights and easements reserved in this ARTICLE VII shall be conducted in a manner so as to minimize any damage to such Unit or disruption of the operations conducted within such Unit in accordance with this Declaration. Except in the case of an entry (a) by the Association for purposes of performing maintenance of an Owner Maintenance Item due to the responsible Owner’s failure to do so or (b) Declarant for purposes of repairing any Improvements installed by Declarant within such Unit or performing any further construction required to comply with Governmental Requirements, the Unit to be entered shall, following completion of the work to be performed by the entering party, be left in substantially the same condition as existed immediately preceding such entry. Any damage to the Unit caused by any entry pursuant to this ARTICLE VII shall be repaired by the party entering such Unit.

7.5.4 **Association Entry into Exclusive Use Area.** Notwithstanding the provisions of Section 7.2.2 above, the Association shall have the right to enter into the Exclusive Use Area appurtenant to any Unit at any time for purposes of maintenance, inspection or the performance of any other obligation of the Association under the Governing Documents. The provisions of this Section 7.5 shall not be deemed to limit or otherwise apply to any entry by the Association into any such Exclusive Use Area.

ARTICLE VIII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

8.1 **ASSOCIATION FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses; (b) an adequate Reserve Fund for that portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains; and (c) any other funds which the Association may establish. The Board may determine that funds remaining in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Project as a condominium project, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

8.2 **OBLIGATION TO PAY ASSESSMENTS.**

8.2.1 **Personal Obligation.** Each Owner covenants to pay to the Association all Assessments which may be established and collected by the Association from time to time pursuant to this Declaration. Except as provided in this Section, all Assessments, together with interest, costs, and reasonable attorney fees for the collection thereof, shall constitute a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner (each, a "*Unit Purchaser*") unless expressly assumed by the Unit Purchaser, or unless the Unit Purchaser has actual or constructive knowledge of delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of an estoppel certificate pursuant to Section 16.6 below disclosing such delinquent Assessment.

8.2.2 **Waiver of Use.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Association Property or by abandoning such Owner's Condominium.

8.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Maintenance Fund accounts must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied.

Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article.

8.4 ALLOCATION OF ASSESSMENTS.

8.4.1 **Percentage Share.** Each Owner shall pay that percentage of the total Annual, Capital Improvement and Reconstruction Assessments imposed by the Association pursuant to this ARTICLE VIII in accordance with the proportionate shares and Assessment Units as set forth on **Exhibit D** attached hereto.

8.5 ANNUAL ASSESSMENTS.

8.5.1 **Commencement of Annual Assessments.** Annual Assessments shall commence for the Project on the first day of the first calendar month following the conveyance of the Association Property to the Association.

8.5.2 **Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as may be established by the Board pursuant to this ARTICLE VIII. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner and shall not be required to apportion such additional expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the full amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

8.5.3 **Determination of Annual Assessment Amounts.** All Annual Assessments shall be assessed uniformly against the Owners and their Condominiums based on the Assessment Units assigned to each such Condominium pursuant to **Section Error! Reference source not found.** above; provided, however that in the event that the Board determines a more equitable method of allocating the costs of any utilities (including water) serving the Units in a Building is appropriate and reasonable, the Board may adjust its determination of Annual Assessments accordingly. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. Annual Assessments for the Fiscal Year in which Annual Assessments commence shall be based on the Budget for the Association to be approved by the Board on or before the commencement of such Annual Assessments. For each subsequent

Fiscal Year, the Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of the beginning of such Fiscal Year.

8.5.4 Adjustments to Annual Assessments. If the Board determines at any time during the Fiscal Year of the Association that the Annual Assessment being collected for such Fiscal Year is or will become inadequate to pay all Common Expenses to be incurred by the Association during such Fiscal Year, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Annual Assessment for the remainder of such Fiscal Year. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the first installment of such increased Assessment becomes due.

8.6 CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital improvement or other such addition to the Association Property to be incurred by the Association.

ARTICLE IX **INSURANCE**

9.1 ASSOCIATION'S DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages (collectively, the "*Association Insurance Policies*"):

9.1.1 Public Liability. Adequate commercial general public liability insurance (including coverage for medical payments), in an amount determined by the Board, but not less than that required by Section 6840 of the California Civil Code, providing coverage against claims and liability for bodily injury, death and property damage arising from the activities of the Association and the Owners, with respect to the Association Property.

9.1.2 Fire and Property Insurance. Fire and property insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Association Property; provided, however, the Association shall have no obligation to maintain fire and property insurance (a) for any Owner Improvements installed by or on behalf of an Owner within such Owner's Unit.

9.1.3 Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including Reserve Funds, in the custody of the Person during the term of the insurance. The aggregate amount of the

fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Condominiums in the Project, plus Reserve Funds.

9.1.4 Other Insurance. Such other insurance covering risks customarily insured by associations managing condominium projects similar to the Project in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance with such coverage as the Board determines is appropriate in its sole discretion. Notwithstanding the foregoing, the Association has the power, but not the duty, to obtain insurance for the Association Property for loss due to earthquake and flood, in such limits and with such coverage as the Board determines is appropriate in its sole discretion.

9.1.5 Beneficiaries. The Association Insurance Policies shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

9.1.6 Notice of Expiration Requirements. If available, each of the Association Insurance Policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least thirty (30) days prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to any insurance trustee named pursuant to Section 9.1.8 below and to each Mortgagee who has filed a written request with the carrier for such notice.

9.1.7 Insurance Premiums. Premiums for Association Insurance Policies are Common Expenses; provided, however, that any deductible amounts or self-insurance retention component of claims covered by such Association Insurance Policies shall be payable from the Association's Reserve Fund.

9.1.8 Trustee for Policies. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 9.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers on any claims submitted under the Association Insurance Policies. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust

agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and property insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

9.1.9 Annual Insurance Review. The Board shall review the Association's insurance policies at least annually to determine the appropriate amount of coverage under the property and fire insurance referred to in this Section 9.1. If economically feasible, the Board may, at its sole discretion, obtain a current appraisal of the full replacement value of the Improvements within the Project (other than Owner Improvements) except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, as it deems appropriate.

9.2 RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner shall maintain the following insurance:

9.2.1 Liability. Commercial general public liability insurance (occurrence form), including coverage for medical payments, with such limits as may be established by the Board and which much exceed \$1,000,000.00, insuring against (i) any and all activities within said Owner's Unit and Exclusive Use Area, and (ii) liability for the activities and business operations of such Owner and its Permittees within the Project (including the use of automobiles within the Association Property by such Owner and its Permittees). The insurance shall include contractually assumed liability endorsements.

9.2.2 Fire and Property Insurance. Standard form fire and property insurance with extended coverage endorsements as written in California, without deduction for depreciation, insuring all Owner Improvements, personal property and all other property located within such Owner's Unit and Exclusive Use Area, in an amount as near as possible to the full replacement value thereof.

9.2.3 Worker's Compensation Insurance. Each Owner shall maintain, and shall require its Permittees to maintain, Worker's Compensation and Employer's Liability Insurance, as required by law.

9.2.4 Additional Owner Insurance Requirements.

(a) All policies maintained by such Owner or its Permittees (collectively, "*Owner-Maintained Policies*") shall be written as primary policies,

not contributing with, and not in excess of coverage which the Association may carry. Such insurance may provide for reasonable and customary deductible amounts. If on account of the failure of Owner to comply with the provisions of this Section 9.2, the Association is adjudged a coinsurer by its insurance carrier, then, in addition to all other remedies available to the Association, any loss or damage the Association shall sustain by reason thereof shall be borne by such Owner and shall be immediately paid by such Owner upon receipt of a bill therefore and evidence of such loss.

(b) Coverage afforded under the Owner-Maintained Policies may not adversely affect or diminish any coverage under any of the Association Insurance Policies. If any loss intended to be covered by any Association Insurance Policy occurs and the proceeds payable under such Association Insurance Policy are reduced due to coverage afforded by any Owner-Maintained Policies, such Owner shall assign the proceeds payable under such Owner-Maintained Policies to the Association, to the extent of such reduction, for application to the liabilities incurred by the Association which would otherwise have been covered by proceeds payable under the applicable Association Insurance Policies.

(c) Each Owner shall deliver certificates of insurance evidencing the coverage required under this Section 9.2 to the Association not later than thirty (30) days after taking title to a Condominium within the Project, and thereafter at least 30 days prior to expiration of each such Owner-Maintained Policy. Such certificates shall name the Association, Declarant (if applicable) and the Manager as additional insureds and shall expressly provide that the interest of the same therein shall not be affected by any breach by Owner of any policy provision for which such certificates evidence coverage. Further, all certificates shall expressly provide that not less than 30 days prior written notice shall be given to the Association in the event of material alteration to or cancellation of the coverages evidenced by such certificates. Duplicate copies of all Owner-Maintained Policies shall be deposited with the Association on request.

(d) Any insurance required to be carried by an Owner pursuant to this ARTICLE IX may be carried by an Owner's or its Permittees under a blanket policy or under policies maintained by the Owner or Permittees with respect to other property owned or operated by the Owner or Permittees or their affiliates, provided that Declarant and Association are not deprived of any insurance benefits hereunder. Nothing in this Declaration shall be deemed to preclude any Owner from carrying any additional insurance as such Owner may deem necessary or appropriate.

9.3 REQUIRED WAIVERS. All Owner-Maintained Policies shall include a waiver of subrogation claims against the Association, Declarant and Manager. All Association Insurance Policies shall provide for a waiver of subrogation of claims against each Owner and such Owner's tenants. In addition to the foregoing, as to any claims arising under the Association Insurance Policies and/or Owner-Maintained Policies, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by such Persons. Without limiting the

foregoing, any Association Insurance Policies and Owner-Maintained Policies insuring against physical damage must provide, if reasonably possible, for waiver of:

- (a) any defense based on coinsurance;
- (b) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association and/or Owner, as applicable, in violation of this ARTICLE IX;
- (c) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;
- (d) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (e) notice of the assignment by any Owner of their interest in the insurance by virtue of a conveyance of any Condominium;
- (f) any right to require any assignment of any Mortgage to the insurer;
- (g) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and
- (h) prejudice of the insurance by any acts or omissions of Owners or Permittees thereof that are not under the control of the Association or the insured Owner, as applicable.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

10.1 **DAMAGE TO ASSOCIATION PROPERTY.** Each Owner is liable to the Association for damage to the Association Property sustained due to the negligence or willful misconduct of an Owner or Permittees of the Owner's Unit which is not fully reimbursed to the Association by proceeds from the Association Insurance Policies and/or Owner-Maintained Policies, including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage. The Association may, after notice and hearing, (a) determine whether any claim shall be made upon any Association Insurance Policies and/or Owner-Maintained Policies and (b) levy as a Special Assessment against the responsible Owner a charge equal to (i) any deductible paid in connection with such claim, (ii) the increase (if any) in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be liable as described herein and (iii) any other costs or expenses incurred by the Association which are not reimbursed by proceeds from Association Insurance Policies and/or Owner-Maintained Policies. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

10.2 **RESTORATION OF ASSOCIATION PROPERTY.**

10.2.1 Association's Obligation to Restore. If all or any portion of the Association Property is damaged or destroyed, the Association shall cause such Improvements to be restored to their former condition as promptly as practical on the terms set forth in this ARTICLE IX. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the "as-built" plans, if any, for Improvements within the Association Property, unless changes thereto have been approved by at least sixty percent (60%) of the Owners and by Mortgagees holding first Mortgages on Condominiums to which at least fifty-one percent (51%) of Assessment Units within the Project have been allocated.

10.2.2 Funding of Restoration Costs. The Association shall use the proceeds of its insurance and/or any Special Assessments payable to the Association pursuant to Section 10.1 above, to fund all costs incurred by the Association in performing reconstruction or repair of the Project pursuant to this ARTICLE IX (the "**Reconstruction Costs**"). In the event that such insurance proceeds and/or Special Assessments are not sufficient to fund the full amount of the Reconstruction Costs, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. Notwithstanding the foregoing, any Reconstruction Assessment exceeding ten percent (10%) of the amount of Annual Assessment otherwise payable by the Owners within the Fiscal Year in which the Reconstruction Assessment is to be levied, or more than thirty percent (30%) of the Annual Assessments otherwise payable over the period in which the Reconstruction Assessment will be levied if spread over more than one (1) Fiscal Year (collectively, the "**Reconstruction Assessment Limit**"), must be approved by Owners holding at least sixty percent (60%) of the voting power of the Association and, if applicable, Mortgagees holding first Mortgages on Condominiums within the Project to which at least fifty-one percent (51%) of the voting power of the Association has been allocated.

10.2.3 Disapproval of Restoration. In the event that (a) the Board fails to affirmatively approve restoration and repair of the Project and impose any Reconstruction Assessment necessary to fund the full amount of the Reconstruction Costs, if any, in connection therewith, or (b) the Owners fail to approve any Reconstruction Assessment requiring Owner approval pursuant to Section 10.2.2 above, in each case within six (6) months after the date on which the destruction occurred, then the Board shall proceed as provided in Section 10.3 below.

10.2.4 Additional Limitations on Restoration Obligation. Notwithstanding the foregoing, subject to the approval of Owners holding at least sixty percent (60%) of the voting power of the Association and, if applicable, by Mortgagees holding first Mortgages on Condominiums to which at least fifty-one percent (51%) of Assessment Units within the Project have been allocated, the Association need not perform any repair or reconstruction which is not required by applicable Governmental Requirements.

10.3 SALE OF PROPERTY AND RIGHT TO PARTITION. No Owner shall have the right to partition of their interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 6656(b) of the California Civil Code. For purposes of Subsection 4 of Section 6656(b), partition may occur only if the following conditions are satisfied: (a) within twelve (12) months after the date on which destruction occurred, the Board shall have failed to approve the repair and/or restoration of the Project and/or the Owners shall have failed to approve any Reconstruction Assessment requiring Owner approval, in each case as contemplated in Section 10.2.3 above, or (b) within twenty-four (24) months after the date on which destruction occurred, restoration or repair has not actually commenced for any reason other than causes beyond the reasonable control of the Association. In such event, the Association shall prepare, execute and Record, as promptly as practical, a certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Project at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

10.4 OWNER'S RESTORATION OBLIGATIONS. Each Owner shall be solely responsible for the restoration and repair of any damages to Owner Improvements located within such Owner's Unit. Without limiting the foregoing, each Owner shall be obligated to repair and restore, as soon as commercially reasonable, any damage to Owner Improvements which is visible from outside such Owner's Unit or which would otherwise materially, adversely impact the cost of insurance on the Association Property or any other Unit. In the event that the Owner is obligated to restore any Owner Improvements pursuant to the preceding sentence, such repair and restoration shall be commenced as soon as commercially reasonable. All debris and rubble from the damage or destruction shall be promptly removed by such Owner from the Owner's Unit and shall not be stored or maintained for any period of time within the exterior areas of the Association Property. No damage or destruction shall relieve the Owner of the affected Unit from the obligation to pay Assessments pursuant to this Declaration. All restoration and repair to be performed by any Owner, whether voluntary or mandatory shall be performed in accordance with the following requirements.

10.4.1 All work shall be performed in a good and workmanlike manner and shall conform to applicable Governmental Requirements, the Architectural Guidelines and all other provisions of this Declaration (including, without limitation, the provisions of ARTICLE VI hereof).

10.4.2 All such work shall be completed with due diligence and at the sole cost and expense of the Owner performing it.

10.5 NOTICE TO OWNERS AND LISTED MORTGAGEES. The Board, immediately on having knowledge of any material damage or destruction to the Association Property, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first mortgages on Condominiums in the Project who have filed a written request for such notice with the Board.

ARTICLE XI **EMINENT DOMAIN**

The term “taking” as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. For purposes of this ARTICLE XI, (i) “Remaining Units” shall be defined as those Units within the Project which are either (a) not affected by the taking or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition before the taking, and (ii) a “Minor Taking” shall be defined as a taking of any portion of the Project which can be restored in a manner such that operation of the Project and the Remaining Units located therein will not, after such restoration, be substantially and adversely affected.

11.1 PROJECT CONDEMNATION. If there is a taking of all or any portion the Project such that the continued ownership, operation and use of the Project in accordance with this Declaration is substantially and adversely affected, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3 above unless Owners of the Remaining Units holding at least one-third (1/3) of the voting power of the Association approve, by affirmative vote within one hundred twenty (120) days after the effective date of the taking (a) continuation of the Project, (b) the repair, restoration and replacement (to the extent feasible) of the Association Property and the Remaining Units and (c) imposition of any Reconstruction Assessment necessary to fund such repair and restoration in the event that the “Available Restoration Funds” (as defined below) would be insufficient to fund the full cost of restoring the Association Property. “Available Restoration Funds” shall be defined as the sum of (i) the total amount of the condemnation proceeds payable to the Association upon such takings plus (ii) any amounts the Owners of the Remaining Units wish to contribute to restoration of the Association Property.

11.2 TAKING OF A CONDOMINIUM. Upon the taking of any Condominium within the Project, or any portion thereof (other than a taking of the undivided interest in the Common Area appurtenant to such Condominium), any portion of such Owner's Unit which is not taken shall, following demolition thereof, become part of the Association Property, and the Owners of such taken Units, by acceptance of the award allotted to them in the condemnation proceedings, shall be deemed to have relinquished (a) to the other Owners, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the taken Units (if any) and the Exclusive Use Area appurtenant thereto. Each Owner relinquishing their interests pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit shall not be liable for Assessments under this Declaration which accrue on or after the date such Owner accepts their condemnation award. Without limiting the foregoing, for purposes of any vote of the Members required pursuant to this ARTICLE XI, the Membership in the Association appurtenant to the ownership of any Condominium within the Project which is the subject of a taking shall be deemed terminated upon the effective date of such taking as contemplated in this Section, **Error! Reference source not found.** and the Owner of any Unit so taken shall have no further voting rights in the Association.

11.3 MINOR TAKINGS.

11.3.1 Mandatory Restoration following Minor Taking. The Association shall be obligated to repair and restore the affected portions of the Association Property following a Minor Taking provided that payment of all Reconstruction Costs to be incurred by the Association in performing such repair and restoration, as reasonably estimated by the Association, will not, after application of the Available Restoration Funds, require imposition of a Reconstruction Assessment exceeding the Reconstruction Assessment Limit. In such event, the Association shall promptly undertake such restoration of the affected portions of the Association Property and, if necessary, the Board shall levy a Reconstruction Assessment equal to the amount of Restoration Costs exceeding the Available Restoration Funds (the "**Excess Restoration Costs**") as necessary to fund such repair and restoration. Notwithstanding the foregoing, nothing in this Section 11.3.1 shall obligate the Association to restore any Owner Improvements or personal property located within the Remaining Units.

11.3.2 Optional Restoration following Minor Taking. In the event that the Excess Restoration Costs to be incurred by the Association as a result of a Minor Taking would exceed the Reconstruction Assessment Limit, then the Board shall call a Special Meeting of the Members of the Association for purposes of approving or disapproving imposition of a Reconstruction Assessment in excess of the Reconstruction Assessment Limit. Unless the required Reconstruction Assessment is approved by a majority of votes cast by the Owners of the Association at such Special Meeting (but further provided that at least fifty percent (50%) of the voting power of the Association is represented, either in person or by proxy, at such Special Meeting), the Association shall have no obligation to restore any portion of the Association Property affected by such taking. Furthermore,

should the continued ownership, operation and use of the Project in accordance with this Declaration be substantially and adversely affected in the absence of such restoration, the Project shall be sold pursuant to Section 11.1 above. Upon approval of the required Reconstruction Assessment, the Board shall contract for such restoration and levy a Reconstruction Assessment which shall be added to the Available Restoration Funds and applied to restoration of the Association Property.

11.4 CONDEMNATION AWARDS. Subject to Section 11.2 above, the Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All condemnation awards relating to the Association Property shall be payable to the Association for the benefit of the Owners and their Mortgagees and shall be distributed to such Owners and Mortgagees as provided in this Section 11.4.

11.4.1 Award for Taking of Condominium. Any award in condemnation for the taking of a Condominium shall be paid to the Owner of the Condominium so taken.

11.4.2 Award for Taking of Association Property. Any award in condemnation for the taking of all or any portion of the Association Property shall be paid to the Association and shall be applied to the Restoration Costs to be incurred by the Association in restoring the Association Property following such taking. If the Restoration Costs are less than the amount of the condemnation awards payable upon such taking, then that portion of the condemnation awards which exceeds the Restoration Costs shall be paid to the Owners of the Remaining Units in proportion to the decrease in the fair market value of each of their Condominiums resulting from such taking. Notwithstanding the foregoing, in the event that, following a taking of the Project as described in Section 11.1 above, the Owners of the Remaining Units do not elect to continue the Project pursuant thereto, then any award in condemnation for such taking shall be distributed to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3.

11.4.3 Awards Not Compensatory for Value Of Real Property. Any portion of an award in condemnation which does not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

11.4.4 Payments to Mortgagees. Notwithstanding anything to the contrary set forth in this ARTICLE XI, prior to the distribution to the Owners of any portion of any award in condemnation payable to the Association, the Association is hereby authorized to first apply any such distribution to the balance then due on any mortgages encumbering such Owners' Condominiums, in order of priority.

11.5 **NOTICE TO OWNERS AND MORTGAGEES.** The Board, on learning of any taking affecting a Unit or a material portion of the Association Property, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of mortgages on Condominiums in the Project who have filed a written request for such notice with the Association.

ARTICLE XII **INDEMNITY**

12.1 **OWNER INDEMNITY.** In addition to any other indemnity obligations set forth elsewhere in this Declaration, each Owner (the “*Indemnifying Owner*”) shall, subject to Section 12.2, protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with (i) any accident, injury, loss, or damage to any Person or loss or damage to the Project occurring on (or resulting from acts committed on) the Indemnifying Owner’s Unit, (ii) use of the Unit or the Project by the Indemnifying Owner or its Permittees, (iii) the conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner’s Unit or the Project by Permittees of the Indemnifying Owner’s Unit and (iv) the Indemnifying Owner’s breach of this Declaration.

12.2 **GENERAL PROVISIONS.** Notwithstanding anything to the contrary in this ARTICLE XII, (a) no Person shall be entitled to indemnification for any damage arising from their gross negligence or willful misconduct or the gross negligence or willful misconduct of their Permittees and (b) the Association, Declarant and each Owner, for itself and its Permittees, waives any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

ARTICLE XIII **RIGHTS OF MORTGAGEES**

13.1 **GENERAL PROTECTIONS.** No amendment or violation of this Declaration shall defeat or render invalid the rights of the First Mortgagee under any first mortgage encumbering any Condominium within the Project made in good faith and for value, provided that after the foreclosure of any such First Mortgage, such Condominium will remain subject to this Declaration. For purposes of this Declaration, “First Mortgage” means a mortgage with first priority over other mortgages or Deeds of Trust on a Condominium and “First Mortgagee” means the Mortgagee of a First Mortgage. For purposes of any provisions of the Governing Documents which require the vote or approval of a specified percentage of First Mortgagees, such vote or approval is determined based on the number of votes allocated to the applicable Condominium encumbered by each such First Mortgage.

13.2 **UNPAID ASSESSMENTS.** First Mortgagees may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Association Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

13.3 **BREACH.** A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise. Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

13.4 **DISTRIBUTION OF INSURANCE AND TAKING PROCEEDS.** No Owner, or any other party, shall have priority over any right of Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or taking awards for losses to or a taking of Condominiums, Common Area or Association Property. Any contrary provision in the Governing Documents is null and void.

13.5 **ADDITIONAL RIGHTS.**

13.5.1 **Notice.** Each First Mortgagee, insurer or guarantor of a First Mortgage encumbering any Condominium within the Project, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or property loss which affects either a material portion of the Project or the Condominium securing the First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium securing the First Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any Association Insurance Policy; (d) any abandonment of that portion of the Project within which the Condominium securing the Mortgage may be located and/or termination of the Association; and (e) any proposed action of the Association which, pursuant to the terms of this Declaration, requires consent by a specified percentage of First Mortgagees who have submitted a written request to the Association for notice of such proposed action.

13.5.2 **Amendments.** The provisions of this ARTICLE XIII may not be amended except with the consent of the required percentage of First Mortgagees as more particularly set forth therein.

ARTICLE XIV
ENFORCEMENT

14.1 **ENFORCEMENT OF RESTRICTIONS.** All disputes arising under the Governing Documents, other than those arising under Section 14.2 below or otherwise subject to Section 6870 of the California Civil Code, shall be resolved as follows.

14.1.1 **Violations Identified by the Association.** If the Board determines that there is a violation of the Governing Documents, or the Board determines that an Owner Improvement requires maintenance, repair or restoration pursuant to the terms of Section 4.2 above, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Board and the length of time the Owner has to complete the work proposed in the plans submitted to the Board. If an Owner does not perform such corrective action as required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. The Board may collect any such delinquent Special Assessment pursuant to the procedures established in Section 14.2 below.

14.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution or litigation for relief.

14.1.3 **Legal Proceedings.** Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 14.1.1 and Section 14.1.2 above must first be followed, if they apply.

14.1.4 **Additional Remedies.** The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

14.1.5 **No Waiver.** Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

14.1.6 **Right to Enforce.** The Board and any Owner may enforce the Governing Documents as described in this Article. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

14.1.7 **Limit on Expenditures.** The Association may not incur litigation expenses, including attorney fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the written consent of Owners representing not less than fifty-one percent (51%) of the voting power of the Association (excluding any Owner who would be a defendant in such proceedings). Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in ARTICLE II hereof, (b) to enforce the architectural control provisions contained in ARTICLE VI hereof, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents in accordance with Section 14.2 below, (d) for a claim, the total value of which is less than fifty thousand dollars (\$50,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or to borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

14.2 NONPAYMENT OF ASSESSMENTS.

14.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. The Association may also require the delinquent Owner to pay a late charge of the greater of ten percent (10%) of the delinquent assessment or \$10 in accordance with Civil Code Section 6808. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorney fees) and late charges shall bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorney fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

14.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All sums assessed in accordance with this Declaration (but expressly excluding any fine or penalty imposed upon any Owner pursuant to Section 14.1.4 above) may constitute a lien on the respective

Condominium prior and superior to all other liens, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded before the date on which the “Notice of Delinquent Assessment” (described in this Section) was Recorded against the respective Condominium.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner’s Condominium to collect a past due Assessment, the Association shall send written notice (“*Notice of Intent to Lien*”), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (1) the collection and lien enforcement procedures of the Association, (2) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, and the method of calculation, any fees and costs of collection, any attorney fees, (3) a statement that the Association may recover reasonable costs of collecting past due Assessments, (4) a statement that the Owner has the right to inspect the Association’s records, pursuant to California Corporations Code Section 8333, (5) the following statement in 14-point boldface type or all capital letters: “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION”; and (6) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association.

(c) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner’s dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment (“*Notice of Delinquent Assessment*”) securing the payment of any Annual, Capital Improvement, Reconstruction Assessment or Special Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in Civil Code Section 6814. The Notice of Delinquent Assessment must identify (1) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (2) the amount of collection costs incurred, including reasonable attorney fees, (3) a sufficient legal description of the Condominium that has been assessed, (4) the Association’s name and address, (5) the name of the Owner of the Condominium that has been assessed, and (6) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Civil Code Section 2924b to the Owner of record of the Condominium no later than (10) calendar days after Recordation. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Project as a whole.

(e) **Exceptions.** Notwithstanding anything to the contrary set forth in this Declaration as provided in Civil Code Section 6824(b), any monetary penalty imposed by the Association to discipline an Owner for failing to comply with the Governing Documents may not become a lien enforceable by nonjudicial foreclosure against such Owner's Condominium; however, monetary penalties imposed for late payments and as a means of reimbursing the Association for costs incurred for the repair of damage to Association Property may become a lien against an Owner's Condominium enforceable by foreclosure and sale of the Condominium.

(f) **Release of Lien.** Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

14.2.3 Enforcement of Liens. The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by foreclosure and sale of the Condominium by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other Persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement, Reconstruction Assessment or Special Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the foreclosure sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorney fees as fixed by the court.

14.2.4 Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person.

14.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorney fees not to exceed the maximum amount allowed by law), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

14.2.6 Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation,

to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

ARTICLE XV
DURATION AND AMENDMENT

15.1 **DURATION.** This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 15.2 is Recorded.

15.2 **TERMINATION AND AMENDMENT.**

15.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than seventy-five percent (75%) of the voting power of the Association, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment. Without limiting the foregoing, until termination of the Class B Vote pursuant to Section 3.6.1(b) above, any amendment to this Declaration must be adopted by one hundred percent (100%) of the Class B vote.

15.2.2 **Unilateral Amendment by Declarant Before First Close of Escrow.** Notwithstanding any other provisions of this Section 15.2, at any time prior to the first Close of Escrow of a Condominium to an Owner other than Declarant, 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.

15.2.3 **Unilateral Amendment by Declarant After First Close of Escrow.** Notwithstanding any other provisions of this Section 15.2, after the first Close of Escrow of a Condominium to an Owner other than Declarant, Declarant may unilaterally amend this Declaration so long as Declarant or an affiliate of Declarant owns any portion of the Project and so long as such amendment does not materially adversely affect the operation, use or enjoyment of a Condominium by its Owner or Permittees. Declarant shall effectuate said amendment by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant.

15.2.4 Mortgagee Consent. In addition to the notices and consents required by Section 15.2.1, the following types of amendments to this Declaration must be approved by Mortgagees of the First Mortgages on Condominiums representing fifty-one (51%) percent of the Mortgagees of First Mortgages who have requested that the Association notify them of any of the proposed amendments listed below:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of First Mortgages hereunder;

(b) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure; and

(c) Any amendment which would or could result in partition or subdivision of a Condominium in any manner inconsistent with this Declaration.

15.2.5 Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 15.2.1. No such termination is effective unless it is also approved in advance either by (a) if termination is proposed due to substantial destruction or condemnation of the Project, that percentage of Mortgagees required for amendment of this Declaration as set forth in Section 15.2.4 above, or (b) if termination is for reasons other than such substantial destruction or condemnation, by Mortgagees holding First Mortgages on Condominiums representing not less than sixty-seven percent (67%) of the total voting power of the Association as allocated pursuant to Section 3.6.1 above.

15.2.6 Notice to Mortgagees. Each Mortgagee of a First Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

15.2.7 Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of First Mortgages must include a certification that the requisite approval of such First Mortgagees was obtained.

ARTICLE XVI
GENERAL PROVISIONS

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

16.2 **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Project to the public, or for any public use.

16.3 **SECURITY AND PRIVACY DISCLAIMER.** Services provided by the Declarant or the Association may provide access control or other security benefits to the Project; however, these services do not provide security for Persons, personal property or the Buildings or Improvements in the Project. Neither Declarant nor the Association undertakes any obligation to provide security for the Project nor do they make any representations or warranties whatsoever concerning the privacy, security or safety of the Project. Neither the Association nor Declarant shall be liable to any Person, and each Owner waives any claim against the Association and Declarant, for (i) any unauthorized or criminal entry of third parties into the Project, any Unit or any Building in the Project, (ii) any damage, injury or death of any Person, or (iii) any loss of property in and about the Project, any Unit or any Building in the Project, if any of such events listed in items (i) to (iii) are caused by any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services provided by the Association.

16.4 **EFFECT OF DECLARATION; BINDING COVENANTS RUNNING WITH THE LAND; EQUITABLE SERVITUDES.** Every Person who owns, occupies or acquires any right, title, estate or interest in any Condominium or the Project hereby consents and agrees, and shall be conclusively deemed to have consented and agreed, to every easement, restriction, reservation, right, covenant, condition and equitable servitude contained herein, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired its interest in such Condominium or the Project. Each and all of the restrictions, covenants, and easements of this Declaration (i) shall constitute equitable servitudes which shall apply to and be binding on the Owners and all Persons having or hereafter acquiring any interest in any portion of the Project and each and all of their respective successors, assigns, Mortgagees, and Permittees; and (ii) are imposed pursuant to a general plan for the improvement and use of the Project and are designed for the mutual benefit of the Owners. The covenants contained in this Declaration shall constitute covenants running with the land in the Project; shall be binding upon, and shall inure to the benefit of, the Project and any portion thereof or interest therein; and shall be binding upon, and shall inure to the benefit of, Declarant, all Owners, and any Person

having or acquiring any portion of the Project or any interest therein and their successive owners and assigns. Notwithstanding the foregoing, except as otherwise expressly provided herein, the rights or privileges conferred upon the owners by this Declaration shall not inure to the benefit of any Permittee or other Person who is not an owner, nor shall any non-owner be deemed to be a third party beneficiary of any of the provisions contained herein.

16.5 RECORDATION. This Declaration shall be Recorded in the Office of the County Recorder and shall be effective upon such Recordation.

16.6 ESTOPPEL CERTIFICATE. Each Owner, Declarant and the Association shall, upon the written request of Declarant or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Condominium, an estoppel certificate stating (i) whether Declarant, the Association or the Owner to whom the request has been directed (as applicable) knows of any default under this Declaration and, if there are known defaults, specifying the nature thereof, (ii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof, and (iii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration is, at that time, in full force and effect. An estoppel certificate that is limited to the information described in the preceding paragraph shall be returned to the requesting party within ten (10) business days of receipt of the request; however, in the event that a requesting party requests information that exceeds the scope of the preceding sentence, the responding party shall have additional time to respond depending on the scope and nature of the request.

16.7 NO REPRESENTATIONS OR WARRANTIES. No representations or warranties, express or implied, have been given or made by Declarant, the Association or their agents in connection with the Project, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as provided in this Declaration or in any written agreement with Declarant.

16.8 ENFORCEABILITY. Declarant makes no representations or warranties regarding the future enforceability of any portion of this Declaration and/or any other Governing Documents for the Association.

16.9 NOTICES.

16.9.1 Notice to Owners/Mortgagees. Except as otherwise provided in this Declaration, notice to be given to an Owner or Mortgagee must be in writing and may be delivered to the designated representative of such party personally, by U.S. Mail or regular United States mail, postage prepaid, or by overnight delivery by a reputable overnight courier or by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means. In the absence of any written designation to the contrary, delivery of any notice hereunder to one (1) or more co-owners of a Condominium, to any general partner of a partnership owning a

Condominium, or to a manager or managing member of a limited liability company owning a Condominium, shall, in the absence of written instructions to the contrary signed by such Owner or co-owners, constitute delivery to all co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation owning a Condominium constitutes delivery to the corporation. Each Owner and/or any Mortgagee thereof may change its address by written notice to the Association given in the manner hereinabove stated. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Unit.

16.9.2 Notice to Association. Any notice to be given to the Association shall be sent by regular United States mail, postage prepaid, or by overnight delivery by a reputable overnight courier, addressed to the Association at the following address:

Baker Collective Condominium Owners Association
c/o Marwest Commercial
P.O. Box 52798
Irvine, CA 92618

The Association may change its address by written notice to the Owners given in the manner stated in Section 16.9.1 and 16.9.2 above.

16.9.3 Notice to Declarant. All notices to Declarant shall be sent by regular United States mail, postage prepaid, or by overnight delivery by a reputable overnight courier, addressed to Declarant at the following address:

Baker Center LLC
c/o Ross Mitchell
2121 Rosecrans Avenue, Suite 3335
El Segundo, CA 90245

Declarant may change its address by written notice to the Association and the Owners given in the manner stated in Sections 16.9.1 and 16.9.2 above.

16.9.4 Notice of Emergency Situation. Each Owner shall be responsible for providing to the Association, pursuant to the notice provisions set forth in Section 16.9.1, a telephone number or other means of immediate notification for purposes of contacting such Owner upon the occurrence of an emergency situation in such Owner's Unit. In the event that any Unit within the Project shall be leased, the Owner may designate the tenant thereof as such Owner's emergency notification contact in which event notice of an emergency situation to such tenant shall be deemed notice to the Owner of the applicable Unit. Failure to provide valid contact information for emergency notification purposes shall be deemed a waiver of the right to prior notice of the exercise of any rights provided to the Association hereunder upon the occurrence of an emergency situation.

16.10 **ATTORNEYS' FEES; COURT COSTS.** If any action or proceeding is instituted to enforce or interpret this Declaration or for damages on account of the breach of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable attorneys' fees and costs and expenses of litigation incurred in such action or proceeding.

16.11 **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Project does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Project.

ARTICLE XVII
DECLARANT'S RIGHTS

17.1 **INTEREST OF DECLARANT.** Declarant has created a comprehensive plan for the development of the Project which includes modern planning objectives which have been formulated for the common good within the Project. The completion of that work and the sale, resale and other disposal of the Units is essential to the establishment of the Project as a quality commercial condominium development. Each Owner acknowledges that Declarant has a substantial interest in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration. Declarant intends, but is not obligated, to develop all of the Units within the Project; provided, however, Declarant makes no covenant, representation or warranty that the Units or the Project will be developed as intended. Nothing contained herein or in any provision of any of the other Governing Documents shall obligate Declarant to develop the Project or construct any specific Improvements within the Project or on any other land. The provisions of this ARTICLE XVII supersede and control all other provisions of the Declaration as applied to Declarant. If there is a conflict between any other portion of the Governing Documents and this Article, this Article shall control.

17.2 **DEVELOPMENT RIGHTS.** Until the Declarant Rights Termination Date, Declarant shall have the right to take any of the following actions without the approval of any other Owner or the Association:

17.2.1 **Further Subdivision; Special Power of Attorney.** Declarant shall have the right to subdivide or resubdivide the Project prior to the first Close of Escrow for a Condominium within the Project. Declarant shall further have the right to relocate the boundaries of any of the Units remaining unsold within any Building or the Association Property adjacent thereto, and in connection therewith, to record amendments to the Condominium Plan. Each Owner, by accepting and recording a grant deed to a Condominium in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project, as Owner's Attorney-in-Fact, for Owner and for each of Owner's Mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees,

administrators, executors, legal representatives, successors 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 for purposes of preparing, executing, acknowledging and recording any of the following documents to effectuate and accomplish the purposes of this Article: (i) any amendment to or restatement of the Condominium Plan covering such Owner's Condominium for the purposes stated above and/or in order to correct errors, to conform to as-built conditions, or to bring such Condominium Plan into compliance with any City, County, State or Federal laws or regulations; provided that no such amendment may change the location or dimensions of any Unit previously conveyed to an Owner without such Owner's express written consent; (ii) any map, map waiver, certificate of compliance or similar document required or permitted by applicable law; (iii) any application for zoning or setback changes or variance or special use permits or any other permits or reports required or permitted by applicable law; (iv) any Supplementary Declaration or amendment thereto and (v) any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

17.2.2 Development and Construction; Plan Modifications. Declarant shall have the right to take all actions reasonable and necessary to comply with any development conditions imposed by the City on the Project and to complete construction of Improvements or other development activities on the Association Property and on any portion of the Project owned by Declarant. Declarant shall further have the right to modify Declarant's development plan and/or alter Declarant's construction plans and designs for the Project, and in connection therewith, modify any Improvements previously installed by Declarant within any Condominium owned by Declarant or within the Association Property (provided that no such modification of the Association Property may alter the dimensions of or otherwise materially adversely impact any Unit adjacent to that portion of the Association Property so altered). Without limiting the foregoing, Declarant shall have the right to construct or install such additional Improvements on the Project (including without limitation, within the Building) as Declarant considers advisable in the course of development of the Project. Declarant shall be exempt from the architectural control requirements set forth in Article VI above.

17.2.3 Additional Easements. At any time prior to the first Close of Escrow for the conveyance of a Condominium by Declarant, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, to the Association or other Owners or to others as Declarant determines are reasonably necessary to the Project's proper development and disposal.

17.3 SALES AND MARKETING RIGHTS.

17.3.1 **Sales Activities.** Declarant's rights under this Declaration include, but are not limited to, the right to sell or lease any portion of the Project directly or through agents and representatives. In connection therewith, Declarant shall have the right to install and maintain on or within the Association Property such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Declarant may use any Condominiums owned or leased by Declarant in the Project as a real estate sales office or leasing office.

17.3.2 **Easements for Marketing Purposes.** Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Association Property and any facilities thereon, without any cost, for access, ingress, egress, use or enjoyment, to (a) show the Project to prospective purchasers or tenants; and (b) dispose of the Project as provided in this Declaration. Declarant and prospective purchasers and tenants are also entitled to the nonexclusive use of any portions of the Association Property for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Project. The use of the Association Property by Declarant may not unreasonably interfere with the use thereof by the other Owners.

17.3.3 **Project Name.** The Project shall be marketed under the general name "**BAKER COLLECTIVE CONDOMINIUMS.**" Declarant may change the marketing name of the Project at any time in Declarant's sole discretion.

17.4 **RULES AND REGULATIONS.** Prior to the Declarant Rights Termination Date, Declarant shall have the right to impose Architectural Guidelines and/or other Rules and Regulations as Declarant may deem reasonable and appropriate for the protection of the Association Property and preservation of the Project as a whole.

17.5 **ASSIGNMENT OF DECLARANT RIGHTS.** Declarant may assign all or any portion of its rights under the Governing Documents to any successor in interest to any portion of Declarant's interest in the Project by an express written assignment which specifies the rights of Declarant so assigned.

17.6 **DECLARANT APPROVAL RIGHTS.** Without limiting the provisions of Section 15.2.3 and 15.2.4 above, the following actions may not be taken by the Association at any time before the Declarant Rights Termination Date without the prior written approval of Declarant:

- (a) Any amendment or action requiring the approval of First Mortgagees;
- (b) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Association Property by Declarant ; or
- (c) Any change in the general, overall, architectural or landscape design of the Project or the Association Property.

[SIGNATURES ON NEXT PAGE]

***SIGNATURE TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR BAKER COLLECTIVE CONDOMINIUMS***

This Declaration is dated for identification purposes _____, 2024.

DECLARANT:

Baker Center LLC, a Delaware
limited liability company

By: _____

[NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

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 _____)

On _____, 2024, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____
 Notary Public

(Seal)

SUBORDINATION

The undersigned, as holder of the beneficial interest in that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of May 30, 2019 and recorded in the Office of the County Recorder of Orange County on June 3, 2019, as Instrument No. 2019000189166 and that certain Assignment of Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of March 2, 2021 and recorded in the Office of the County Recorder of Orange County on March 17, 2021, as Instrument No. 2021000183673 (collectively, the "**Deed of Trust**"), which Deed of Trust encumbers all or a portion of the real property covered by the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Baker Collective Condominiums ("**Declaration**"), does hereby intentionally and unconditionally subordinate the lien of said Deed of Trust to the Declaration, and any amendment or restatement of said documents.

Dated: _____

Entity: CHCP 2021-FL1 LTD

By: _____

Name: _____

Its: _____

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 _____)

On _____, 2024, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

Notary Public

(Seal)

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR BAKER COLLECTIVE CONDOMINIUMS**

LEGAL DESCRIPTION OF THE PROJECT

**PARCEL 1 OF PARCEL MAP NO. 2023-153 IN THE CITY OF COSTA MESA,
COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK
 , PAGES THROUGH , INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE
OF THE COUNTY RECORDER OF SAID COUNTY.**

**EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR**

BAKER COLLECTIVE CONDOMINIUMS

ASSOCIATION MAINTENANCE OBLIGATIONS

1. With respect to each of the four Buildings, the Association shall be responsible for the periodic painting of the exterior walls of the Buildings as well as the maintenance, repair and replacement of any wooden fins located on the outside of the Buildings;
2. Monument or directory signs within the Association Property, including any repainting, repair or replacement required from time to time (provided that any Owner who installs a panel on a monument sign shall be responsible for their panel);
3. Common Utility Improvements, whether located within the Association Property or within a specific Unit, so long as they serve more than one Unit;
4. Any landscaping, planters, walkways, sidewalks, access drives, driveways, and parking areas (including restriping and repaving thereof) located within the Association Property;
5. Irrigation systems located on or within the Association Property;
6. Any light fixtures within the Association Property, including, without limitation any light fixtures located within the Association Property that may be controlled from or separately metered to an Owner's Unit;
7. Commonly used sewers or drainage improvements within the Association Property which are not maintained by a local governmental agency or utility company;
8. Any stormwater treatment facilities located within the Project; and
9. Any storage or trash areas within the Association Property.

**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR**

BAKER COLLECTIVE CONDOMINIUMS

OWNER MAINTENANCE OBLIGATIONS

1. Improvements comprising or located within the Unit, including all components of the respective Building, the roof, structural components, external and interior walls, the Building shell and foundation, all doors, all windows and other glass components (provided, however, that the Association shall be responsible for the exterior painting of each Building as well as any wooden fins located on the outside of the Buildings);
2. All interior doors, hardware, interior wall surfaces, drywall, cabinets, floor coverings, drop ceilings, permanent fixtures and appliances located within the Unit;
3. All wiring, meters, electrical outlets, switches and other utility improvements exclusively serving such Owner's Unit which are not Common Utility Improvements whether located within such Owner's Unit or any other portion of the Project;
4. Life safety systems serving the Unit, including fire suppression systems, risers, sprinkler heads, and monitoring equipment;
5. Any interior or exterior elevator or other lift system which is located within or which exclusively serves the Unit;
6. Any patio area that is designated as Exclusive Use Area that is appurtenant to the Unit, including, without limitation, the maintenance, repair and replacement of all improvements located within such patio area (including any flooring (concrete, dirt or otherwise) or landscaping located within the boundaries of any such patio area and any fencing or wall enclosing it);
7. With respect to any garage that is designated as Exclusive Use Area that is appurtenant to the Unit, the Owner shall be responsible for the following: the garage door opener(s), remote control(s), garage door hardware, all Owner Improvements inside the garage, and the painting and repair and replacement of the garage door (subject to the architectural control requirements of Article VI of the Declaration) (provided that the Association shall otherwise remain responsible for the structure containing such garages);
8. Light fixtures within the Unit
9. HVAC system for the Unit and any other heating or ventilating equipment serving such Unit which is not a Common Utility Improvement (including ducts and control systems), regardless of where such system or equipment is located;

10. Water and Sewer lines and laterals (from the point of connection to common water and/or sewer lines within the Association Property), toilets, drains, sinks, faucets, water pressure regulators;
11. Telecommunications and data transfer facilities, conduits, cabling, wiring or other telecommunications utility improvements exclusively serving such Owner's Unit whether located within the Unit or any other portion of the Project;
12. Any utility improvements located within the Association Property or any other Unit within the Project which serve such Owner's Unit exclusively; and
13. Any other Owner Improvements located within the Unit.

**EXHIBIT D
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
BAKER COLLECTIVE CONDOMINIUMS**

PROPORTIONATE SHARE AND ASSESSMENT UNITS

<u>UNIT</u>	<u>PROPORTIONATE SHARE</u>	<u>ASSESSMENT UNITS</u>
A	16.92%	1692
B	34.70%	3470
C	34.79%	3479
D	13.59%	1359
<u>TOTALS</u>	100.00%	10,000