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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR**

**ALMA-32  
HOMEOWNERS' ASSOCIATION**

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THIS DOCUMENT INCLUDES A WAIVER OF THE RIGHT TO TRIAL BY JURY AND THE USE OF A PROGRAM OF ALTERNATIVE DISPUTE RESOLUTION WITH REGARD TO CERTAIN DISPUTES (INCLUDING CONSTRUCTION DEFECT DISPUTES) AMONG THE ASSOCIATION AND/OR THE OWNERS, AND THE DECLARANT AND/OR OTHERS.

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR**

**ALMA-32  
HOMEOWNERS' ASSOCIATION**

This Declaration is made this fourteenth day of January, 2014, by MB SURF DEVELOPMENT, LLC, a California Limited Liability Company ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property ("Property") located in the City of Manhattan Beach, County of Los Angeles, State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant intends to develop the Property into a condominium project under the provisions of California Civil Code Section 1350, et seq., subject to certain easements, covenants, conditions, restrictions, reservations, liens and charges, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and to sell and convey residential Condominiums to the Owners, subject to the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Property in furtherance of a plan of condominium ownership as described in Section 1351 of the California Civil Code.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute equitable servitudes in accordance with California Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

## Article I

### Definitions

Section 1. "Architectural Committee" means the committee, if any, created in accordance with Article V of this Declaration.

Section 2. "Articles" means the Articles of Association of Alma-32 Homeowners' Association, as such Articles may be amended from time to time.

Section 3. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article IV of this Declaration.

Section 4. "Association" means Alma-32 Homeowners' Association, a California nonprofit mutual benefit entity, its successors and assigns, including its agents, the Board, or any committee as applicable.

Section 5. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article III, Section 7 of this Declaration, as the same may be in effect from time to time.

Section 6. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 7. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 8. "City" means City of Manhattan Beach and its various departments, divisions, employees and representatives.

Section 9. "Common Area" means the entire Project except all Units, as defined in Article I, Section 31 and shown on the Condominium Plan. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon. As more particularly described in Article II, Section 2(d), portions of the Common Area are designated as Exclusive Use Common Areas whose use and enjoyment are restricted to the Owners and occupants of the Units adjacent to such Exclusive Use Common Areas. Each Unit Owner will receive the following undivided interest in the Common Area:

one – half ( 1/2 ).

"Exclusive Use Common Area" means those portions of the Common Area to which an exclusive right of use is granted to an Owner which shall be appurtenant to his Unit, as shown and described on the Condominium Plan, and shall consist of Deck, Yard Area, Driveway, and

Guest Parking Space, which Exclusive Use Common Areas shall be assigned in the Grant Deed conveying fee title to the Condominium Unit to which they are appurtenant.

Section 10. "Common Expense" means any use of funds authorized by Article IV hereof and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities or any portion of any Unit that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities or any portion of any Unit that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 11. "Common Facilities" means the trees, hedges, plantings, lawns, shrubs, landscaping, walkways, driveways, fences, utilities, berms, pipes, lines; lighting fixtures, buildings, structures and/or other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 12. "Condominium" means an estate in real property as described in the California Civil Code Sections 783 and 1351(f) consisting of an undivided interest as a tenant in common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

Section 13. "Condominium Plan" means a condominium plan recorded pursuant to California Civil Code Section 1351(e) respecting the Project, and any amendments to the plan.

Section 14. "County" means the County of Los Angeles, State of California, and its various departments, divisions, employees and representatives.

Section 15. "Declarant" means MB SURF DEVELOPMENT, LLC, a California Limited Liability Company, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder, in a recorded written document.

Section 16. "Declaration" means this instrument, as it may be amended from time to time.

Section 17. "Exclusive Use Common Area" means those portions of the Common Area set aside for the exclusive use of a Unit Owner or Owners (pursuant to Article II, Section 2(d) of this Declaration) and which is appurtenant to the Unit.

Section 18. "Governing Documents" is a collective term that means and refers to all documents governing the Property, including this Declaration, the Articles, the Bylaws, and the Association Rules.

Section 19. "Improvements" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, landscaping, landscape structures, antennas, utility lines, or any structure of any kind.

Section 20. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article XIV, Section 6 hereof.

Section 21. "Mortgage" means any security device encumbering all or any portion of the Property, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 22. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Condominium. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Condominium within the Property.

Section 23. "Owner of Record" and "Member of the Association" include any Owner and mean any person, firm, corporation or other entity in which title to a Condominium is vested as shown by the official records of the Office of the County Recorder.

Section 24. "Project" means the Property and the Improvements located thereon which are intended to create a condominium project as described in California Civil Code Section 1351(f).

Section 25. "Property" means all parcels of real property (Common Area and Condominium Units described in Recital "A" hereof), together with all buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 26. "Regular Assessment" means an Assessment levied on an Owner and his or her Condominium in accordance with Article IV, Section 2 hereof.

Section 27. "Single Family Residential Use" means occupation and use of a Unit for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 28. "Special Assessment" means an assessment levied on an Owner and his or her Condominium in accordance with Article IV, Section 3 hereof.

Section 29. "Special Individual Assessment" means an Assessment made against an Owner and his or her Condominium in accordance with Article IV, Section 4 hereof.

Section 30. "Subdivision Map" means the map for the Property referenced in Recital "A" of this Declaration.

Section 31. "Unit" means the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project; such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying Condominiums, and this Declaration. "Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

## Article II

### Property Rights and Obligations of Owners

Section 1. Elements of Condominium. Ownership of each Condominium within the Project includes a Unit, an undivided interest in the Common Area, a membership in the Association, and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration, the Condominium Plan and the deed to the Condominium.

Section 2. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Property, including ingress and egress to and from his or her Condominium, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following rights and restrictions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable admission and other fees for, and to otherwise designate and control the use of any unassigned parking and storage spaces within the Common Area.

(b) The right of the Association to adopt Association Rules as provided in Article III, Section 7 hereof, regulating the use and enjoyment of the Property for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the common facilities, other than roads, by any Owner and/or Owner's Tenants and guests.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Article IV, Section 3 hereof.

(d) Each Unit shall have Exclusive Use Common Areas, as defined in the California Civil Code Section 1351(i) and as shown on the Condominium Plan. The Exclusive Use Common Areas are set aside for the exclusive use and enjoyment of the Owners and occupants of the appurtenant Unit and the non-exclusive easements granted herein shall be subordinate to and shall not interfere with these exclusive easements.

Section 3. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of a Unit within the Property shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be

amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Condominium, the entering into a lease, sublease or contract or sale with respect to any Unit, or the occupancy of any Unit shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

Section 4. Delegation of Use. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants or lessees who reside in the Owner's Unit, provided that any rental or lease may only be to a single family for Single Family Residential Use for a term of not less than thirty (30) days.

Section 5. Obligations of Owners. Owners of Condominiums within the Property shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any tenant of the Owner's Condominium. Each Owner or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights to use and enjoy the Property and the relationship that each person bears to the Owner or tenant.

(b) Notification Regarding Governing Documents.

(i) As more particularly provided in California Civil Code Section 1368, as soon as practicable before transfer of title with respect to any Condominium, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; and (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorney's fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Condominium being sold.

(ii) The Association shall, within 10 days of the mailing or delivery of a request for the information described in subparagraph (b)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials.

(c) Payment of Assessments and Compliance With Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all rules and regulations

set forth in, or promulgated by the Association pursuant to any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(d) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

(e) Joint Ownership of Condominiums. In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (e) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(f) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Condominium or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Condominium pursuant to this Declaration.

(g) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Condominium which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Condominium shall cease.

## Article III

### Homeowners Association

Section 1. Creation of Association. The Owners of the Condominiums shall constitute the Association.

Section 2. Association Membership. Every Owner of a Condominium shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Condominium owned and the membership shall be appurtenant to such Condominium. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Condominiums in the Property ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Condominium through foreclosure or deed in lieu thereof.

Section 3. Voting Rights of Members/Arbitration Provision. The Association shall have one (1) class of voting Membership. Members shall have one (1) vote for each Unit owned. When more than one person holds an interest in one Unit, all such persons shall be Members. Irrespective of the number of Members who own each Unit, the collective Members owning each Unit shall have one (1) vote. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more votes than one (1) vote per Unit be cast with respect to any Unit.

Approval of any action by the Association which must have the approval of a majority of the voting power of the Members of the Association, other than an action to enforce the obligations of the Declarant under any completion bond, shall require the vote or written assent of a bare majority of the total voting power of the Association as well as the vote and written assent of a majority of the voting power of the Members other than the Declarant.

Any action which may be taken by the vote of Members at a regular or special meeting, except the election of governing body Members where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the Corporation Code.

Any Owner may attend and vote at such meeting in person, or by agent duly appointed by an instrument in writing signed by the Owner and filed with the Board. Any such appointment may be revoked at any time by written notice of the Owner of any Unit. Where there is more than one record Owner of a Unit, any or all of such persons may attend any meeting of the Association, but it shall be necessary for those Owners present to act unanimously in order to cast the vote to which they are entitled.

In the event of a disagreement between Owners and in order to break a tie vote, the issue or issues, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. Where a vote or written assent is required, either for or against an action, the arbitrator shall be considered a provisional director and/or member of the Association who is authorized to attend any regular, special or adjourned meeting of the Association. In the event of referral to arbitration, the owner requesting arbitration shall remit the fee to initiate the arbitration. However, the final cost of said arbitration shall ultimately be borne as determined by the arbitrator.

Voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association.

Section 4. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Condominiums within the Property and to enforce payment of such Assessments in accordance with Article IV of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 5. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Condominium. In the case of an encumbrance of such Condominium, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Article II, Section 3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 6. Powers and Authority of the Association.

(a) Powers Generally. The Association shall have the responsibility of managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or

permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Section 8 of the Bylaws.

(b) Association's Limited Right of Entry. The Association, and/or its agents shall have the right, when necessary, to enter any Unit to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations with respect to buildings containing Units; (ii) obligations to enforce the architectural rules of Article V hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common. The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Unit where entry is required, or any adjoining Unit or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all nonemergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours' written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Unit.

(c) Association as Attorney-in-Fact for Owners. Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Condominium to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Property upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Article IX hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Condominium shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

#### Section 7. Association Rules.

(a) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Condominiums within the Property. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Article V hereof; (iii) the conduct of disciplinary proceedings in accordance with Article XIV hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VI

hereof; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other improvements located within any Exclusive Use Common Areas and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing and (ii) posted in the Association's principal office. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

Section 8. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIV hereof.

#### Section 9. Limitation on Liability of Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person 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. Without limiting the generality of the foregoing, this standard of care and limitation of liability

shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No Released Party shall be responsible to any Owner or to any member of his or her family or any of his or her tenants, guests, servants, employees, licensees, invitees or any other person for any loss or damage suffered by reason of theft or otherwise of any Article, vehicle or other item of personal property which may be stored by such Owner or other person within any Unit or Exclusive Use Common Area or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Property, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this subparagraph to provide volunteer directors and officers with protection from liability to the full extent permitted by California Civil Code Section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said Section, the Civil Code shall prevail.

## Article IV

### Assessments

#### Section 1. Assessments Generally.

(a) **Covenant to Pay Assessments.** Each Owner of one or more Condominiums, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney's fees) for the collection thereof, shall be a debt and a personal obligation for the Person who was the Owner of the Condominium at the time the Assessment was levied. Each Owner who acquires title to a Condominium (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Condominium so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney's fees) for the collection thereof, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which such Assessment is made. Regular Assessments commence on the first of the month following the conveyance of the first Condominium in this Project to a purchaser. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Article IV, Section 9(b) hereof.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Condominium or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Condominium or any other portion of the Property.

#### Section 2. Regular Assessments.

(a) **Preparation of Annual Budget. Establishment of Regular Assessments.** Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of Section 8.02 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period

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provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

(b) Establishment of Regular Assessment by Board of Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that prior to any increase in assessments the Board of Directors must comply with the provisions of Section 1366 of the California Civil Code.

(c) Assessments to Address Emergency Situations. When increasing assessments necessary for emergency situations the Board of Directors must comply with the provisions of Section 1366 of the California Civil Code.

(d) Reserve Funds.

(i) The governing body shall not expend funds designated as reserve funds for any purpose other than:

(A) The repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established, or

(B) Litigation involving the purposes set forth in (A) above.

(ii) Notwithstanding the provisions of (i)(A) and (i)(B) above, the governing body:

(A) May authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Section 1363.05 of the Civil Code. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the moneys will be repaid to the reserve fund.

(B) Shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of the initial transfer; however, the Board may, after giving the same notice required for considering a transfer, and, upon making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the development, delay the restoration until such time it reasonably determines to be necessary.

(C) Shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (B) above. Such Special Assessments shall be subject to the limitations specified in Civil Code Section 1366. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

(D) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of expense related to the litigation on at least a quarterly basis. The accounting shall be made available for the inspection of Members of the Association at the Association's office.

(iii) The governing body shall do all of the following:

(A) At least once every three years cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget for any fiscal year.

(B) Annually review the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review.

(C) Cause the reserve account study to include at a minimum:

(1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probably remaining useful life of the components identified in (1) above as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in (1) above during and at the end of its useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For purposes of this subsection (iii), the term "reserve accounts" means both of the following: the estimated funds which the Association's governing body has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain, and the funds received and not yet expended or disposed from either a compensatory damage award or settlement to an Association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from the estimated funds described above.

For the purposes of this subsection (iii), "reserve account requirements" means the estimated funds which the Association's Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

(e) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Condominiums within the Property owned by the assessed Owner to the total number of Condominiums subject to Assessments so that each Condominium bears an equal share of the total Regular Assessment.

(f) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment Roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll (which may be maintained in the form of a computer printout) shall show for each Condominium the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Condominium, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Article II, Section 5(b) hereof shall be conclusive upon the Association and the Owner of such Condominium as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(g) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Condominium, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 30 nor more than 60 days prior to the beginning of the next fiscal year.

(h) Failure to Make Estimate. If, for any reasons, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article IV, Section 3(a)(i) for that year, shall be assessed against each Owner and his or her Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(i) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Condominium shall be due and payable in advance to the Association in equal annual installments on the second day of January or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of January in the year in which the Assessment is due. The collection of Regular Assessments in installments as hereinabove provided is for the convenience of the Association only. The total Regular Assessment is levied as of the commencement of the Association's fiscal year and in the event of a default in the payment of any installment, the Association may declare the entire balance of the Regular Assessment to be in default and pursue the remedies set forth in Article IV, Section 9, below, as to said delinquency.

### Section 3. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, except as prohibited by Article IV, Section 2(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the propose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section 3 subparagraph (a)(i) shall be subject to membership approval requirements under the circumstances described in Article IV, Section 2(a).

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable

reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX hereof.

(b) Special Assessments. The Board of Directors may not levy special assessments without complying with the provisions of Section 1366 of the California Civil Code.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Condominium in the same manner prescribed for the allocation of Regular Assessments pursuant to Article IV, Section 2(e), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed by first class mail to each Owner.

Special Assessments for purposes described in Section 3(a)(i) shall be due as a separate debt of the Owner and a lien against his or her Condominium, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in Section 3(a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Condominium, and shall be payable in full to the Association not less than 30 days nor more than 60 days after the mailing of such notice.

#### Section 4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (ii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XIV, Section 6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessments.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Property

that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(b) Levy of Special Individual Assessments and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 4(a), such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment. A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Owner was allegedly responsible or in bringing the Owner and his Unit into compliance with the governing instruments is not an assessments which may become a lien against the Owner's Unit enforceable by the sale of the Unit.

Section 5. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Property; (b) to promote the enjoyment and use of the Property by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate line may be created hereby) of the Owner of the Condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 6. Exemption of Certain of the Property From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium owned by the Association.

Section 7. Notice and Procedure for Member Approval Pursuant to Section 2 and 3. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Section 2 and 3 of this Article IV, approval of the requisite percentage

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of the Members shall be solicited either by written ballot conducted in accordance with Corporations Code Section 7613 and Section 5 of the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with Section 5 of the Bylaws. The quorum required for such membership action shall be fifty-one percent (51%) of the Members.

#### Section 8. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association for Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings, or moneymarket accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California, County of Los Angeles. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 1365.5.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Separate Accounts: Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded, or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Article IV, Section 3(a)(i) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated. Unless the Association is exempt from federal or state taxes, all sums

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allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

#### Section 9. Collection of Assessments; Enforcement of Liens.

(a) **Delinquent Assessments.** If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law from and after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code Sections 1366(c) and 1366.1 or comparable superseding statutes.

#### (b) Effect of Nonpayment of Assessments.

(i) **Creation and Imposition of a Lien for Delinquent Assessments.** As more particularly provided in California Civil Code Section 1367 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Condominium of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article IV and California Civil Code Section 1366, (B) the legal description of the Owner's Condominium against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Condominium, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. A copy of the recorded Notice of Delinquent Assessments shall be mailed in the manner set forth in California Civil Code Section 2924h to the Owners of record of the Condominium no later than 10 calendar days after recordation. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(ii) **Remedies Available to the Association to Collect Assessments.** The Association may initiate legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Condominium or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale of a Condominium by a trustee acting pursuant to this Section

9 shall be conducted in accordance with California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

For liens recorded on and after January 1, 2006, an Association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent Assessments or dues, exclusive of any accelerated Assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent Assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an Association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Condominium and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Condominium or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code Section 2924c, or comparable superseding statute. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

The Association or its assignee shall mail a copy of the Notice of Default to the Owner or reputed Owner of the subject Condominium at the Owner's last address appearing on the books or records of the Association, and to any person to whom the giving of a notice of default is required by applicable provisions of California Civil Code Section 2924b. Following receipt of the Association's notice, the Owner and junior encumbrances shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust. After the lapse of such time as may then be required by law following the recording of a Notice of Default under a deed of trust, the Association or its assignee may give Notice of Sale in the manner and for the period required in the case of deeds of trust. After the giving of the Notice of Sale, the Association, or its assignee, without demand on the Owner, may sell the Condominium at the time and place fixed in the Notice of Sale, at public auction to the highest bidder. At

the Trustee's sale, the Trustee shall have the right to require every bidder to show evidence of his or her final bid in cash or a bank savings and loan certified check and to require the last and highest bidder to deposit the full amount of his or her final bid in cash or a bank or savings and loan association certified check. The Association or its assignee may postpone the noticed sale by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Condominium so sold, but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the subject property and purchase the same at such sale. After deducting from the sale proceeds all costs, fees, and expenses incurred by the Association, the net proceeds shall be applied to the payment of all sums secured by the Association's lien at the time of sale, including interest, costs and attorney's fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

(iv) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(v) The Association shall distribute the written notice as required by Civil Code Section 1365.1(b) to each Member of the Association during the 60-day period immediately preceding the beginning of the Association's fiscal year.

Section 10. Transfer of Condominium by Sale or Foreclosure. Except as otherwise provided herein, the sale or transfer of any Condominium shall not affect any Assessment lien duly recorded with respect to such Condominium prior to the sale or transfer. However, the sale or transfer of any Condominium pursuant to the foreclosure of any first Mortgage shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Condominium, whether it be the former beneficiary of the first Mortgage or other prior encumbrance of a third party from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of a Condominium obtains title to the same as a result of foreclosure of any such first Mortgage or exercise of a power of sale contained therein, the person acquiring title, his or her successors and assigns, shall not be solely liable for the Assessments chargeable to such Condominium which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all of the Condominiums, including such acquirer, his or her successors and assigns. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

Section 11. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Condominium prior and superior to all other liens or encumbrances recorded subsequent thereto, 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 (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

Section 12. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Condominiums, such taxes shall be included in the Regular Assessments imposed pursuant to this Article IV, Section 2 and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

Section 13. Payment of Assessments under Protest. If a dispute exists between the Owner and the Association regarding any disputed charge or sum levied by the Association including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of small claims court, the Owner may, in addition to pursuing dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of the California Civil Code, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (e) of Section 1366, and commence an action in small claims court. Nothing in this Section 13 shall impede an Association's ability to collect delinquent assessments as provided in Sections 1367.1 and 1367.4 of the California Civil Code.

Section 14. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Condominium owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 14 shall be subordinate to the rights of any first Mortgage.

Section 15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time of any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Condominium.

## Article V

### Architectural Improvements/Alterations

Section 1. Improvements in General. No "improvement" (as defined in Article I, Section 19) of any kind shall be commenced, erected or maintained within the Property, nor shall any exterior addition to or change or alteration be made in or to any Unit or Common Facility structure containing Units or to any Exclusive Use Common Area until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Board of Directors as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

Section 2. Submission of Plans; Action by Board of Directors. Plans and specifications for the proposed Improvement shall be submitted to the Board of Directors by personal delivery or certified mail to the secretary of the Association or the President (or agent) of the Board of Directors. In the event the Board of Directors fails to approve or disapprove such design and location with 45 days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval of the Board of Directors can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications, provided that, in respect to the installation or use of a solar energy system, the Board may only impose reasonable restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board of Directors pursuant to Section 1378 of the Civil Code. Any application for approval of architectural modifications regarding solar energy systems that is not denied by the Board in writing within sixty (60) days from the date of receipt of the application shall be deemed approved, unless the delay is the result of a reasonable request for additional information.

Section 3. Architectural Rules. The Board of Directors may, from time to time, adopt, amend and repeal rules and regulations to be known as "Architectural Rules". Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Property, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

Section 4. Variances. The Board of Directors shall be entitled to allow reasonable variances with respect to this Article V or any restrictions specified in Article VI in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board of Directors must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners. Owners shall have 30 days in which to submit to the Board of Directors written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30 day comment period has expired.

(b) The Board of Directors must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Property or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area or Owner within the Property.

Section 5. Estoppel Certificate. Within 30 days after written demand is delivered to the Board of Directors by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board of Directors shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Unit owned by the application Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Unit comply with this Declaration; or (ii) that such Improvements to work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Unit through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 6. Initial Construction by Declarant. The provisions of this Article V shall not apply to the initial construction by Declarant, and neither the Board nor any committee appointed by the Board shall have any right to approve or disapprove such initial construction by Declarant.

## Article VI

### Use of Property and Restrictions

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Condominium Units, Common Areas and other parcels within the Property.

Section 1. Single Family Residential Use. The use of the Units within the Property is hereby restricted to Single Family Residential Use, as defined in Article I, Section 27 hereof. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An Owner is permitted to lease or rent his or her Unit, subject to the provisions of Article II, Section 4 ("Delegation or Use") of this Declaration.

Section 2. Conveyance of Condominiums. Each Condominium shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

Section 3. Interior Improvements. No owner shall at his or her expense or otherwise make any alterations or modifications to the exterior of the buildings, fences or railings containing the Owner's Unit or Exclusive Use Common Area without the prior written consent of the Association or the Architectural Committee, if any. Furthermore, no structural alterations to the interior of or Common Area or Exclusive Use Common Area surrounding any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without prior written consent of the Association or the Architectural Committee, if any. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Unit or Exclusive Use Common Area that will impair the structural soundness or integrity of another Unit or impair any easement or hereditament, or do any act or allow any condition to exist in or around the Owner's Unit or Exclusive Use Common Area which will adversely affect any other Units or their occupants.

Section 4. Common Areas. The Common Areas, other than Exclusive Use Common Areas, shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Units. Such use shall be limited to the private use for aesthetic and recreational purposes by the Association's Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association.

Each Owner, by acceptance of his or her deed, agrees personally and for family members, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend him against, any claim of any person for personal injury or property damages occurring within the Unit of that particular Owner, including the Exclusive Use Common Area, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting his or her Unit.

Section 5. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted within any Unit, Exclusive Use Common Area, or Common Area nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operating of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Unit or Exclusive Use Common Area or from activities within the Common Area, which would unreasonably disturb any other Owner or tenant's enjoyment of his or her Unit or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Unit or the Common Area.

Section 6. Household Pets. The following restrictions regarding the care and maintenance of pets within the Property shall be observed by each Owner and resident:

(a) The only animals that may be raised, bred, or kept in any Unit are domesticated dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in this Declaration, "unreasonable quantities" ordinarily means more than one ( 1 ) pet per Unit; however, the Association may limit the size and weight of pets and may prohibit maintenance of any animal or breed which, in the Association's opinion, constitutes a nuisance to any other Owner.

(b) Dogs shall be allowed on the Common Area only when they are leashed and are otherwise under the supervision and restraint of their Owners.

(c) No Household pet shall be left chained or otherwise tethered in front of a Condominium Unit or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets in the Common Area or balconies or in fenced yard areas adjacent to the Owner's Unit.

(d) Each person bringing or keeping a pet on the Property shall be solely responsible for the conduct of the Owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, and tenants for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners and residents.

Section 7. Signs. No advertising signs or billboards shall be displayed on any building containing Units or posted within or upon any portion of the Common Area or Exclusive Use Common Area except that Owners may post in the windows of their Units any signs required by legal proceedings and a single "For Rent", "For Lease" or "For Sale" sign of reasonable dimensions. A-frame or other directional signs of real estate brokers advertising Units for sale or lease shall only be allowed within the Common Area or roadways within the Property in strict compliance with applicable Association Rules.

Section 8. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Unit, Exclusive Use Common Area, or garage without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section 8 shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Unit, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Unit, or (e) conducting any other activities within the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this Section 8.

Section 9. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate outside of any Unit or Exclusive Use Common Area. Any trash that is accumulated by an Owner outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers and facilities located within designated garbage areas within the Common Areas. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and improvements) shall be removed from the Property to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

Section 10. Storage. Storage of personal property within any Unit or Exclusive Use Common Area shall be entirely within enclosed storage areas. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area.

Section 11. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balcony of any Unit or Exclusive Use Common Area in a manner which is visible from any neighboring Unit or the Common Area.

Section 12. Antennas and Similar Devices

No television antenna, satellite dish, radio, or other electronic antenna device of any type, or other electronic broadcasting and receiving device shall hereafter be erected, constructed, placed or permitted to remain on the exterior of any building within the Property unless there is compliance with each of the following:

(a) The antenna, satellite dish, or other electronic broadcasting or receiving device, has a diameter of thirty-six (36) inches or less; and

(b) The Owner, resident or lessee has made written application for and has obtained the approval of the Architectural Committee for the installation of such device.

The application for approval shall be processed by the Architectural Committee in the same manner as an application for approval of an architectural modification to the property (see Article V). As a condition for approval, Owner must agree to be responsible for the maintenance, repair or replacement of roofs or other building components impacted by the installation, and the installers of the antenna, satellite dish, or other device must agree to indemnify or reimburse the Association or its Members for loss or damage caused by the installation, maintenance, or use of such device.

No activity shall be conducted within any Unit or Exclusive Use Common Area which causes an unreasonable broadcast interference with television or radio reception on any neighboring Unit. The location of common antennas or connection facilities for any cable television system serving more than one Unit shall be as designated by the Association or the Architectural Committee, if any, and each Unit and its Owner shall be subject to the right of other Owners or the Association to install, use, and maintain such common antennas or cable television facilities.

Notwithstanding the foregoing, all restrictions on video or television antennas (including satellite dishes) shall be subject to all applicable federal, state and local laws, including but not limited to, the Federal Telecommunications Act of 1996 and California Civil Code Section 1376, as same may be amended from time to time. Furthermore, all amendments, modifications, restatements and interpretations of the laws applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate and/or interpret this Section.

Section 13. Burning. There shall be no exterior fires whatsoever except barbecue fires located only on the Exclusive Use Common Area of the Owner's Unit and contained within a receptacle designed for such purpose. Also, fire pits as originally installed by Declarant shall be allowed on the decks.

Section 14. Basketball Standards. No basketball standards or fixed sports apparatus shall be permitted within the Property without the express approval of the Association.

Section 15. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit or Exclusive Use Common Area except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Unit or appurtenant structures within the Property.

Section 16. Disease and Pests. No Owner shall permit any thing or condition to exist in his or her Unit or Exclusive Use Common Area, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 17. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Property:

(a) Unless otherwise permitted by the Association, no vehicle or trailer shall be parked or left within the Property other than within an enclosed garage or in designated guest parking areas.

(b) Except as otherwise provided in subparagraph (f), below, only the following vehicles ("authorized vehicles") shall be permitted to be parked by an Owner or resident within the Property: standard passenger vehicles, including "SUVs" and trucks which do not exceed three-quarter tons in gross weight. Boats, trailers, campers, recreational vehicles, commercial vehicles and trucks in excess of three-quarter tons in gross weight are not "authorized vehicles" and shall only be permitted within the Property as provided in subparagraph (f), below.

(c) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall be maintained in closed condition except as necessary to permit ingress and egress of authorized vehicles or to clean or work in the garage. The garages are to be used for the parking of standard authorized vehicles, boats or similar items for storage purposes and shall not be converted to living quarters or work shops or used for the storage of boats, trailers, campers or recreation vehicles in a way which will preclude the parking of the Owner's or occupant's authorized vehicles within the garage.

(d) Designated guest parking areas within the Common Areas are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of their authorized vehicles or the storage of boats, trailers or similar items of personal property, unless expressly authorized by the Association.

(e) No motor vehicle shall be constructed, reconstructed or repaired within the Property and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs.

(f) Campers, boats, trailers, motorcycles, commercial vehicles and trucks in excess of three-quarter tons are not to be parked within the Property, other than within enclosed garages except for periods not to exceed two hours for the purpose of loading and unloading.

Personal property other than authorized vehicles shall not be stored in garages if such storage will necessitate or result in the parking of vehicles on streets within or adjacent to the Property. Parking by commercial vehicles for the purpose of making deliveries or service calls shall be permitted in accordance with the Association Rules.

Each Owner shall maintain their garage or parking spaces in a manner which ensures that it is capable of accommodating no less than the number of vehicles the space was designed to contain.

(g) The Board shall have the authority to tow or restrain by use of devices such as the "Denver Boot", at the Owner's expense, any vehicle parked or stored in violation of this Section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

(h) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the properties as may be deemed prudent and appropriate.

Section 18. Children. Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner and for any property damage caused by such children.

Section 19. Balconies/Decks. Balconies/Decks shall not be used for storage purposes and shall be kept free of clutter and debris. No Owner may (1) place large potted plants, planters, spas, fountains, or other heavy items which may damage the surface of the waterproof membrane on the Balconies/Decks; (2) puncture the waterproof membrane on the surface of the Balconies/Decks; (3) allow any items placed upon the Balconies/Decks to block or impede the flow of water into the floor drains on the Balconies/Decks.

Section 20. Activities Affecting Insurance. Nothing shall be done or kept within any Unit or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article IX, below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Unit or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Common Area.

Section 21. Variances. Upon application by any Owner, the Architectural Committee shall be authorized and empowered to grant reasonable variances from the property use

restrictions set forth in this Article VI, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Committee shall follow the procedures set forth in Article V, Section 5 for the granting of architectural variances.

Section 22. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Article V, Section 6, hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

Section 23. Rights of Declarant. Conveyance of a substantial number of the Units is essential to the establishment and welfare of said Project. In order that all work necessary to complete the Project and to establish a substantially occupied residential community proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines to be reasonably necessary or advisable in connection with the completion or marketing of the Project; or

(b) Prevent Declarant, or its representatives, from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same by sale, lease, or otherwise.

(c) Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the Members' use of the Common Area.

## Article VII

### Maintenance Responsibilities

Section 1. Common Area. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

Section 2. Association Maintenance Responsibility. The Association shall provide exterior maintenance upon each Unit which is subject to Assessment hereunder, and upon the Common Area as follows:

(a) Paint, stain, repair, replace and care for the exterior building surfaces of all Units including roofs, gutters, downspouts, exterior walls, property line fences and walls, provided that the Association shall not be responsible for the repair and replacement of exterior doors, garage doors, and screen doors;

(b) RETAIN A LICENSED PROFESSIONAL TO INSPECT THE COMMON AREA ROOF, ANY COMMON AREA PLANTERS ADJACENT TO THE BUILDING, AND ALL DECKS ANNUALLY. THE ANNUAL INSPECTION SHALL ALSO INCLUDE INSPECTION OF ANY SUBTERRANEAN LIVING OR GARAGE AREAS OF THE UNITS TO DETERMINE IF THERE IS ANY WATER INTRUSION. THE ASSOCIATION IS ALSO RESPONSIBLE FOR INSPECTING AND TESTING DRAINS AND DRAIN LINES ON ALL DECKS ON A SEMI-ANNUAL BASIS. ALL REPAIRS AND WATERPROOFING OF THE COMMON AREA PLANTERS AND ROOF REQUIRED AS A RESULT OF THE INSPECTIONS SHALL BE PERFORMED BY THE ASSOCIATION. ALL REPAIRS AND WATERPROOFING OF THE DECKS, AND SUBTERRANEAN AREAS REQUIRED AS A RESULT OF THE INSPECTIONS SHALL BE PERFORMED BY THE INDIVIDUAL OWNER OF THE UNIT. THE INSPECTION REPORTS AND PROOF OF PAYMENT FOR WORK REQUIRED AS A RESULT OF THE INSPECTIONS SHALL BE RETAINED IN THE ASSOCIATION RECORDS FOR A MINIMUM OF TWELVE (12) YEARS.

(c) Due to the critical nature of maintaining proper drainage on the property, it is essential that a professional maintenance program be established to service the private site drainage and irrigation systems, including, area drains, underground pipe system, and sprinkler utilities. In order to avoid water damage to adjacent buildings, individual owners are responsible for proper operation and maintenance of the landscape sprinkler system in their private yard areas, and the Association is responsible for proper operation and maintenance of the landscape sprinkler system in the common area yard area.

(d) Replace and care for trees, shrubs, grass, walks, and other landscaping Improvements up to the exterior walls of the Owner's Unit, except for plantings and Improvements located in Exclusive Use Common Areas, if any.

(e) The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures. The Association shall have the authority to require the temporary removal of occupants of a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, pursuant to the procedures described in California Civil Code Section 1364, subdivision (d) or any successor statute. The costs of inspection and any necessary corrective measures shall be paid by special assessment, and any temporary relocation shall be borne by each Unit Owner who is required to move.

(f) Maintain the underground sewer, water and electrical lines, whether located within the boundaries of the Owner's Unit or under the Common Area, but the Association shall not be responsible for the risers and connecting lines between such service lines and the individual Units.

The standards of landscaping, the selection and replacement of plant materials and the standards for exterior structural maintenance by the Association hereunder shall be determined by the Board of Directors.

Section 3. Maintenance Manuals for Common Area and Individual Units. The Association shall follow all of the recommended inspection and maintenance guidelines concerning the maintenance and repair of the Common Area facilities that are set forth in the HOMEOWNERS' ASSOCIATION MAINTENANCE MANUAL which shall be delivered to the Board by Declarant. The Board shall maintain in its permanent Association records a copy of the Homeowners' Association Maintenance Manual as well as a copy of the Homeowners' Maintenance Manual for the individual Units. The Board shall make a copy of the Maintenance Manuals available to any Owner for inspection and copying upon request.

#### Section 4. Owner Maintenance Responsibilities.

(a) Each Owner of a Condominium shall be responsible for maintaining his or her Unit, including the equipment and fixtures in the Unit and the interior walls, ceilings, windows and doors of the owned Unit in a clean, sanitary, workable, and attractive condition. Each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner also shall be responsible for repair, replacement, and cleaning of the windows and glass of his or her Unit, both exterior and interior. Each Owner shall maintain the exterior light fixtures on his/her unit, but the fixtures cannot be replaced with any fixture that is different than the original fixtures installed by Declarant without a vote of the Association.

In addition to the Maintenance obligations set forth in this Section 4, the Owners shall comply with the maintenance requirements and schedules set forth in the Homeowners' Maintenance Manual for all separate interests that Owners are required to maintain.

(b) Except as otherwise provided herein, each Owner shall be responsible for cleaning, maintaining and repairing the Exclusive Use Common Areas appurtenant to his or her Unit.

Section 5. Mold. Each Owner, by acceptance of a deed to a Unit, acknowledges, recognizes and understands that there is, and will always be, the presence of certain biological organisms within the Unit. Most typically, this will include the common occurrence of mold. In recent years, mold has received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Owner's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold within the Unit.

Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who or what may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase mold levels within the Unit. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Owner to monitor and maintain his or her Unit so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected areas in the Owner's Unit.

In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Units and Common Area, the Association shall inspect the exterior of the Units and the Common Area improvements not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing mold.

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

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

#### Section 6. Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, Section 4 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Article III, Section 6(b) to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Article XIV, Section 6, hereof.

Section 7. Cooperative Maintenance Easement. There is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association, and the Association's officers, agents, employees and the independent contractors, an easement to enter any Residence for the purpose of conducting any inspections required under this Section and performing any maintenance, repairs and replacements as may be required under this Section; provided, however, that such easement rights may only be exercised at reasonable times and in a reasonable manner.

## Article VIII

### Easements

Section 1. Encroachment Easements. If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements.

Section 2. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Section 2 shall in no way affect any other recorded easement on the Property.

Section 3. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Unit, Exclusive Use Common Area, or Common Facilities, provided that any entry by the Association or its agents into any Unit shall only be undertaken in strict compliance with Article III, Section 6(b).

Section 4. Other Easements. Each Unit, its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Unit and Common Area as shown on the Subdivision Map.

Section 5. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

## Article IX

### Insurance

Section 1. Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost.

(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the buildings containing Units within the Property, including all originally installed built-in or set-in appliances, cabinets, floor coverings, fixtures, and other interior appurtenances, and on any Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall provide amounts or coverage as shall be determined by the Board and shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 5 below.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. Pursuant to Civil Code Section 1365.9, the limits of such insurance shall not be less than \$2 million for projects of 100 units or fewer (\$3 million for projects of more than 100) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Directors and Officers Liability Insurance. Pursuant to Civil Code Section 1365.7, the Association must carry an insurance policy of not less than \$500,000 for individual liability of officers and directors of the Association for negligent acts or omissions in that capacity.

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, earthquake insurance, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than 100 percent of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable or that is required by any institutional first Mortgagee.

(e) Fidelity Bond. A fidelity bond that insures the Association for the estimated maximum amount (or at least three months aggregate assessments on all Units and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit is mandatory, regardless of the number of Units, for a Property with loans by the Department of Veterans Affairs and/or FHA.

(f) The Association shall, upon issuance or renewal of insurance, but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is or is not insured to the levels specified by this Section, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified in this Section, then Owners may be individually liable only for their proportional share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

Section 2. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 3. Notification. The Association shall comply with the notification requirements of Civil Code Section 1365 by distributing to the Association Members on an annual basis not less than thirty (30) days nor more than ninety (90) days preceding the beginning of the Association's fiscal year, all required insurance information including but not limited to the following:

- (a) The amount and types of insurance carried by the Association, and
- (b) Whether or not the Association is insured to the minimum levels required for liability insurance by Civil Code Section 1365.9, and
  - (1) that if not so insured, Members may be individually liable for the entire amount of a judgment resulting from injury or property damage in the Common area, or

(2) that if so insured then Members may be individually liable only for their proportionate share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance coverage.

(c) A summary of the Association's general liability policy that states all of the following:

- (1) The name of the insurer.
- (2) The policy limits of the insurance.

(3) If an insurance agent, as defined in Section 1621 of the Insurance Code, an insurance broker, as defined in Section 1623 of the Insurance Code, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendation of the insurance agent or insurance broker were followed.

(4) The insurance deductibles.

(5) The person or entity that is responsible for paying the insurance deductible in the event of loss.

(6) Whether or not the insurance coverage extends to the real property improvements to the separate interest.

(d) A summary of the Association's earthquake and flood insurance policy, if one has been issued, that states all of the following:

- (1) The name of the insurer.
- (2) The policy limits of the insurance.
- (3) The insurance deductibles.

(4) The person or entity that is responsible for paying the insurance deductible in the event of loss.

(e) A summary of the liability coverage policy for the director and officers of the Association that lists all of the following:

- (1) The name of the insurer.
- (2) The limits of the insurance.

(f) Notwithstanding subdivision (c), (d) and (e), the Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies have been canceled and not immediately replaced. If the Association renews any of the policies or a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Association shall notify its Members of that fact in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code.

(g) To the extent that the information to be disclosed pursuant to subdivision (c), (d), and (e) is specified in the insurance policy declaration page, the Association may meet the requirements of those subdivisions by making copies of that page and distributing it to all its members.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding (1) the amount of personal liability and property damage liability insurance coverage that Owner should maintain because of the Owner's ownership interest in the Common Area and Unit, including any upgrades to the originally installed built-in or set-in appliances, cabinets,

floor coverings, fixtures, and other interior appurtenances, and (2) the availability of loss assessment insurance coverage.

Section 4. Individual Fire and Casualty Insurance Limited. Except as provided in this Section, no Owner can separately insure his or her Unit or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this Article IX, Section 1(a). If any Owner violates this provisions, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Condominium may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Condominium.

Section 5. Trustee. All insurance proceeds payable under this Article IX, Section 1, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or reconstruction is authorized pursuant to Article XI, below, the Association and any duly appointed trustee shall have the duty to contract for such work as provided in said Article.

Section 6. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 7. Distribution to Mortgagees. Subject to the provisions of this Article, any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 8. Owner's Liability Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Condominium that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional first Mortgagee.

## Article X

### Damage or Destruction

Section 1. Destruction; Proceeds Exceed 85 Percent of the Reconstruction Costs. If there is a total or partial destruction of any Unit or Common Facility Improvements within the Property, and if the available proceeds of the insurance maintained pursuant to Article IX are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, a vote shall be taken within 90 days from the date of destruction, and improvements shall be rebuilt only if there is a vote or written assent of Members, constituting a quorum, consisting of a majority of votes at a meeting or an election in favor of a special assessment. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the office of the County Recorder, not later than 120 days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 2. Destruction; Proceeds Less than 85 Percent of the Reconstruction Costs. If the proceeds of insurance are less than 85 percent of the cost of repair and reconstruction, repair and reconstruction may nevertheless take place, if, within 90 days from the date of destruction, eligible Members then holding at least 51 percent of the total voting power determine that such repair and reconstruction shall take place. If a meeting or written ballot is called to vote on the matter, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If the repair and reconstruction are to take place, the Association shall execute, acknowledge and record in the office of the County Recorder not later than 120 days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

Section 3. Rebuilding Procedures. If the eligible Members determine to rebuild, pursuant to Sections 1 or 2, above, the Owners of each Unit located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Unit over and above the available insurance proceeds. The Owner's proportionate share of the cost of reconstruction or restoration shall be based upon the ratio that the square footage of the living area of his or her Unit bears to the total square footage of the living area of all Units. If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Assessment against the Unit of such Owner which may be enforced under the lien provisions contained in Article IV or in any other manner provided in this Declaration.

If any Owner disputes the amount of his or her proportionate liability under this Section 3, such Owner may contest the amount of his or her liability by submitting to the Board, within 10 days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a

hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall set forth a date and time for a special meeting of Members for the purpose of acting on the Board's recommendation, including the making of further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by 51 percent of the total voting power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 4. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this Article X, the Members eligible to vote shall be (a) fifty-one percent (51%) of the total voting power of the Association's membership in the case of any damage to or destruction of Common Facilities other than buildings containing Units, and (b) in the case of any damage to or destruction of buildings containing Units, fifty-one percent (51%) of the voting power of those Members whose Units are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Article 5 of the Bylaws.

Section 5. Rebuilding Contract. If the Eligible Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Property substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least three reputable contractors and shall award the repair and reconstruction work to the lowest bidder that otherwise meets the requirements set forth by the Board or its representative in soliciting bids. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction on terms deemed reasonable by the Board. The insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 6. Rebuilding Not Authorized. If the Eligible Members determine not to rebuild, then any insurance proceeds then available for rebuilding shall be used or distributed as follows:

(a) If, prior to the expiration of 120 days from the date of destruction, 75 percent of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Units within the Property consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Units which were rendered uninhabitable by such damage or destruction, at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser in accordance with Section 8, below), using the available proceeds of insurance for such purpose. Any shortage of insurance proceeds shall be made up by a Special Assessment levied against all remaining Owners. Any payment of the purchase price shall be

made jointly to the selling Owner and all Mortgagees of his or her Unit and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell his or her Condominium by grant deed to the Association as provided herein.

(b) Notwithstanding the determination of Eligible Members not to rebuild pursuant to Section 1 or 2 of this Article, any Units which are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid first from the insurance proceeds remaining after purchase of Condominiums pursuant to subparagraph (a), of this Section 6, if any, and second from a Special Assessment levied against all remaining Owners in the manner described in Section 3 of this Article.

(c) If the required 75 percent of all Owners and institutional first Mortgagees do not consent to purchase the Condominiums which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Property, as of the date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values or in the case of damage to, or destruction of, the Common Area or any Common Facility, to the Owners equally. The Board shall have the duty, within 120 days from the date of destruction, to execute, acknowledge and record in the office of the County Recorder, a certificate declaring the intention of the Members not to rebuild. On recordation of the certificate, the right of any Owner to partition through legal action as described in Article XII shall revive immediately.

Section 7. Minor Repair and Reconstruction. In any case, the Board shall have the duty to repair and reconstruct improvements owned by the Association or improvements it is obligated to repair and maintain, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Any amounts paid by the Board up to and including the above-referenced amount which are not covered by insurance shall be assessed to the Owners of Condominiums which are damaged upon the basis of the ratio of the square footage of the floor area of the Condominium to be assessed to the total square footage of the floor area of all Condominiums to be assessed. In the case of damage to Common Facilities which does not exceed the above-referenced amount, the Owners of all Condominiums shall be assessed for an equal portion of any uninsured expense.

Section 8. Appraiser. Wherever in this Article, or Article XI (Condemnation) reference is made to a determination of the value or fair market value of one or more Condominiums by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards

in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## Article XI

### Condemnation

Section 1. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Property is proposed or threatened by any governmental agency having a right of eminent domain, then, on unanimous written consent of all Owners and all institutional Mortgagees, the Property or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Property, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

#### Section 2. Distribution and Sales Proceeds of Condemnation Award.

(a) Total Sale or Taking. A total sale or taking of the Property means a sale or taking that (i) renders more than 50 percent of the Condominiums uninhabitable or (ii) renders the Property as a whole uneconomical as determined by the vote or written consent of 66-2/3 percent of those Owners and their respective institutional Mortgagees whose Condominiums will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Property, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums on the Property.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Property, meaning a sale or taking that is not a total taking, as determined in Section 2(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

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

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums on the Property whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an appraiser, less such Owner's share of expenses paid pursuant to Section 2(b)(i) (which share shall be in proportion to the ratio that the

fair market value of each Owner's Condominium bears to the fair market value of all Condominiums. After such payment, the recipient shall no longer be deemed an Owner.

(iii) To any remaining Owner(s) and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the court in the condemnation proceedings or by an appraiser, an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as of the date immediately prior to commencement of condemnation proceedings, as determined by the court in the condemnation proceeding or by an appraiser.

## Article XII

### Partition of Common Area

Section 1. Suspension of Right of Partition. Except as expressly provided in this Article, an Owner shall have no right of partition or divide his or her ownership of the Common Area. Partition of the Common Area by the Association can be had on a showing that the conditions to such partition as stated Article X (relating to damage or destruction) or in Article XI (relating to condemnation) or in California Civil Code Section 1359 have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

Section 2. Distribution of Proceeds Upon Partition. Proceeds of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owner's Condominiums determined by appraisal as provided in Article XI, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

Section 3. Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75 percent of the Owners and 75 percent of all institutional first Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under Civil Code Section 1359. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

## Article XIII

### Nonseverability of Component Interests

Section 1. Severance Prohibited. An Owner shall not be entitled to sever his or her Unit in any Condominium from his or her membership in the Association, and shall not be entitled to sever his or her Unit or his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Unit over the Common Area from the Owner's Condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article XII respecting the suspension of partition.

Section 2. Limitation on Interests Conveyed. After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section 2 shall preclude the Owner of any Condominium from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## Article XIV

### Breach and Default

Section 1. Remedy at Law Inadequate. Except for the non-payment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 2. Nuisance. Without limiting the generality of the foregoing Section 1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 3. Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action attorneys' fees and other costs as the court deems just and reasonable.

Section 4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 5. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

#### Section 6. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and

available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 6. The initiation of legal action shall be subject to Article XIX. The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code Section 1354 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Assessment.

(c) Definition of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Loss of Rights; Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's rights to the full use and enjoyment of his or her Condominium due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (ii) below.

(ii) Monetary Penalties. Monetary penalties imposed by the Association (A) for failure of a Member to comply with the Governing Documents, (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage

to the Common Area or Common Facilities allegedly caused by a Member, or (C) in bringing the Member and his or her Condominium into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Condominium in nonjudicial foreclosure, provided that this limitation shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in the Association's efforts to collect delinquent Assessments.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement or, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identify of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(f) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(g) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

## Article XV

### Protection of Mortgagees

Section 1. Mortgage Permitted. Any Owner may encumber his Condominium with a Mortgage.

Section 2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of the Project, or any Condominium, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in the Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, or conveyance in lieu of foreclosure, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale, or conveyance in lieu of foreclosure. On taking title to the Condominium the foreclosure-purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners including the foreclosure-purchaser and his successors and assigns are required to pay their proportionate share as provided in this clause.

Section 3. Control of Amendment or Revocation of Project Documents. In addition to the requirements of Article XVIII, and unless a greater percentage is expressly required by this Declaration, the Articles, or the Bylaws, the prior written consent (or deemed consent as provided below in this clause) of first Mortgagees of Condominiums that have at least fifty-one percent (51%) of the votes of all Condominiums encumbered by first Mortgages shall be required to add or amend any material provisions of the Declaration, the Articles, the Bylaws, the Condominium Plan or the Subdivision Map, which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessment, collection of assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of Common Area or improvements located on it;
- (iv) Casualty and liability insurance or fidelity bonds;

- (v) Rights to use the Common Area;
- (vi) Responsibility for maintenance and repair of Condominiums and Common Area and their improvements;
- (vii) Expansion or contraction of the Project or the addition, annexation, or withdrawal of real property to or from the Project;
- (viii) Boundaries of any Condominium;
- (ix) The interests or rights of the Association or Owners in and to the Common Area;
- (x) The convertibility of Condominiums into Common Area or of Common Area into Condominiums;
- (xi) The leasing of Condominiums;
- (xii) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium; or
- (xiii) Any provisions that are for the express benefit of first Mortgagees or insurers or governmental guarantors of first mortgages.

For purposes of this provision, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any first Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within sixty (60) days after such receipt shall be deemed to have consented to such request.

Section 4. Restriction on Certain Changes. In addition to the requirements of Article XVIII, unless sixty-seven percent (67%) of first Mortgagees of Condominiums have given their prior written approval, neither the Association nor the Owners shall be entitled:

- (i) By act or omission to seek to abandon or terminate the condominium project, except for abandonment provided by statute in case of substantial loss to the units and Common Area;
- (ii) To change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner, or to change the prorata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the prorata share of ownership of each Owner in the Common Area;

(iii) To partition or subdivide any Unit;

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

(v) To use hazard insurance proceeds for losses to Units or Common Area improvements in the development or to any other Association property, for other than the repair, replacement, or reconstruction of such improvements or property except as provided by statute in case of substantial loss to the Units or Common Area of the Project.

Section 5. Mortgagee's Right to Examine Books and Records. Institutional first Mortgagees shall have the right to examine the books and records of the Association and the right to require the submission of financial data concerning the Association, including annual audit reports, budgets, and operating statements as furnished to the Owners.

Section 6. Priority in Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of institutional first Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional first Mortgagees, naming the Mortgagees as their interests may appear.

Section 7. Status of Amenities. All amenities (such as parking, recreation, and service areas) and Common Area shall be available for use of Owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied including Common Area, shall be owned (i) in fee by the Owners in undivided interests or (ii) by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners or by the Association. If the Common Area will be owned by the Association, it shall be transferred to the Association prior to or coincident with the first transfer or conveyance of a subdivision interest by the subdivider.

Section 8. Notice Requirement. If any Owner is in default under any provision of this Declaration or under any provision of the Articles, the Bylaws or the Association Rules, including the payment of assessments or charges by the Owner of any Unit, and the default is not cured within sixty (60) days after written notice to that Owner, the Association shall give to the Mortgagee of record of such Owner written notice of such default and of the fact that the sixty (60) day period has expired. The Association shall also give written notice to the Mortgagee of

record on any Unit when there has been a lapse, cancellation, or material modification of any insurance policy maintained by the Association, any proposed action which requires the consent of a specific percentage of Mortgagees, or any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage.

Section 9. Payments by Mortgagees. Mortgagees of Condominiums may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements of other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

Section 10. Effect of Breach of Declaration on Mortgagee.

(i) Lien Not Invalidated. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

(ii) Mortgagee Need Not Cure Breach. 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 noncurable or of a type that is not practical or feasible to cure.

Section 11. Status of Loan to Facilitate Resale. Any first Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

Section 12. Right to Appear at Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

Section 13. Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

Section 14. Right of First Refusal Inapplicable to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee

of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm, or entity) shall not impair the rights of a first Mortgagee (i) to foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage; or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the mortgage; or (iii) to sell or lease a Condominium acquired by the Mortgagee.

Section 15. Limitation on Term of Management Contract. Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days' written notice and shall have a maximum contract term of one (1) year, provided that the Association can renew any such contract on a year-to-year basis. If the Project is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of sixty-seven percent (67%) of the voting rights of each class of Owners, or of all Owners if only one class exists, and of fifty-one percent (51%) of first Mortgagees.

Section 16. Association Request for Notification of Default. Pursuant to California Civil Code Section 2924b, the Association may record a request that any mortgagee, trustee, or other person authorized to record a notice of default and notice of sale for any Unit within the Project, mail to the Association a copy of the notice of default and of sale. The request must be recorded prior to recordation of the notice of default. The request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the form provided in Section 2924b.

Section 17. Control if Mortgagee Protections Conflict With Other Provisions. In the event of any conflict between any of the provisions of this Article and any other provisions of this Declaration, the provisions of this Article shall control.

## Article XVI

### Notices

Section 1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: to the street address of his or her Condominium or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: at the principal office of the Association (or at such other address as the Association may from time to time designate in writing to the Owners).

Section 2. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the Co-Owners of any Condominium, to any general partner of a partnership which is the Owner of Record of the Condominium, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Condominium, shall be deemed delivered to all such Co-owners, to such partnership, or to such corporation, as the case may be.

Section 3. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit of in the United States mail in Los Angeles County, California.

Article XVII

No Public Rights in the Property

Section 1. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever.

## Article XVIII

### Amendment of Declaration

Section 1. Unilateral Amendment by Declarant. Notwithstanding any other provisions of this section, at any time prior to the first close of escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this section, Declarant (for so long as Declarant owns any portion of the Project) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Project that have not yet been conveyed to the Association or for which there has been no close of escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; and (viii) change any exhibit or portion of an exhibit to the Declaration to conform to as-built conditions.

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

## Article XIX

### General Provisions

Section 1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 75 percent of all Owners terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Los Angeles County, California.

#### Section 2. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial validity or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Section 3. Dispute Resolution. The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

(a) Claims for Declaratory Relief or Enforcement of Project Documents. Prior to the filing of an enforcement action solely for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages not in excess of Ten Thousand Dollars (\$10,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code §§ 1369.510 to 1369.580. The Board shall comply with the requirements of California Civil Code § 1369.590 by providing Members of the Association annually with a summary of the provisions of California Article 2 (commencing with Civil Code §1369.510) of Chapter 7 of Title 6 (Division 2, Part 4), including the following language: "Failure by any Member of the Association to comply with the dispute resolution requirements of § 1369.520 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law."

(b) Design or Construction Defect Claims. Actions by the Association or any Owner pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code §§ 895 through 945.5 (see attached Exhibit "B"), and Civil Code §§ 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time, provided that the Association shall not initiate any claim against Declarant except with the vote or written assent of the Members holding more than seventy-five percent (75%) of the voting rights of the Class A Members, if two classes exist, or, if only one class exists, more than seventy-five percent (75%) of the voting rights of all Members other than Declarant. Declarant and its representatives on the Board of the Association, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions. Prior to voting to pursue such a claim, the Board shall inform the Members of alternatives to remedy the deficiencies without litigation and of potential adverse consequences of litigation.

If a Claim is subject to pre-litigation procedures in Civil Code §§ 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code §§ 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code § 1368.4 and/or Civil Code §§ 910 through 938, as applicable, and any successor statutes or laws.

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

repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

If the Claim is not resolved by and pursuant to the prelitigation procedures under Civil Code §§ 910 through 938, subject to the provisions of Civil Code §§ 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure § 1298.7, the Claim shall be resolved in accordance with the provisions of Section 3(d) of this Declaration (Judicial Reference).

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

- (i) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (ii) The options, including civil actions, that are available to address the problems; and
- (iii) The time and place of the meeting. (*California Civil Code §1368.4(a)*)

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action. (*California Civil Code §1368.4(b)*)

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

- (i) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure §§ 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.
- (ii) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by American Arbitration Association ("AAA") for judicial reference (or any other entity offering judicial reference dispute resolution

procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(1) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(2) The proceedings shall be heard in Los Angeles County, California;

(3) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(4) Any dispute regarding the selection of the Referee shall be resolved by AAA or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(5) The Referee may require one or more pre-hearing conferences;

(6) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(7) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(8) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(9) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(10) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and

(11) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court.

(12) If submission of a disputed matter referenced in this § 9.14.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure § 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA").

(iii) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code §§ 1369.510 to 1369.580 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code §§ 1369.510 to 1369.580, as same may be amended from time to time.

(e) Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

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

(ii) a neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA. In selecting the arbitrator, the provisions of §§1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in § 1297.121, or in § 1297.124 of the Code of Civil Procedure;

(iii) venue of the arbitration to be in Los Angeles County, California;

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

(v) the arbitration shall be conducted in accordance with the Commercial Rules of the AAA;

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

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

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

(ix) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code §§ 1368.4, 1375, 1375.05 or 1375.1;

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

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

(xii) **AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.**

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

b. **WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY AND THE ASSOCIATION, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO**

**TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, THE ASSOCIATION OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Parcel Map 71834 on the day and year first written above.

MB SURF DEVELOPMENT, LLC,  
a California Limited Liability Company

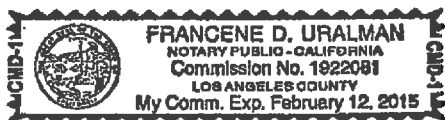
Dated: January 14, 2014

By: *Christine R. Mirick*  
CHRISTINE R. MIRICK, Member

State of California  
County of Los Angeles

On January 14, 2014, before me, FRANCENE D. URALMAN, Notary Public, personally appeared CHRISTINE R. MIRICK who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

*Francene D. Uralman*

**EXHIBIT "A"**

PARCEL 1 OF PARCEL MAP NO. 71834, IN THE CITY OF  
MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE  
OF CALIFORNIA, AS PER MAP FILED IN BOOK 375, PAGES  
56 AND 57, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE  
OF THE COUNTY RECORDER OF SAID COUNTY.

## EXHIBIT "B"

### TITLE 7 OF THE CALIFORNIA CIVIL CODE REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS, SECTION 895-945.5

#### CIVIL CODE SECTION 895

895. (a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.

(b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.

(c) "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.

(d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.

(f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

#### CIVIL CODE SECTION 896-897

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues: Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues: Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this

paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

#### **CIVIL CODE SECTION 900-907**

900. As to fit and finish items, a builder shall provide a home buyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.

901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."

902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.

903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).

905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter

bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.

907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

#### **CIVIL CODE SECTION 910-938**

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written

request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.

At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability,

or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed

contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a

complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinstate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinstate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for

contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.

#### **CIVIL CODE SECTION 941-945.5**

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivisions (a) or (b) if 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivisions (a) or (b) if Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this

chapter does not apply are not limited by this section. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

942. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.

944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5. A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.

(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

SUBORDINATION BY LIENHOLDER

The undersigned beneficiary, under that certain Deed of Trust recorded September 28, 2012, as Instrument Number 20121461547 of Official Records of Los Angeles County, California, which covers the real property described in the Declaration of Covenants, Conditions, and Restrictions for Alma-32 Homeowners' Association ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien of said Deed of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by a Mortgagee shall not constitute said Lienholder's subordination to any future Assessments liens.

CALIFORNIA BANK & TRUST

Date: January 16, 2014

By: *Maria L. Cedeno*  
MARIA L. CEDENO, VICE PRESIDENT

By: \_\_\_\_\_

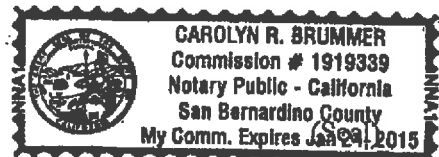
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

On January 16, 2014, before me, Carolyn R. Brummer  
Notary Public, personally appeared Maria L. Cedeno  
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.

*Carolyn R. Brummer*  
(Signature of officer)



11-271

WHEN RECORDED MAIL TO:  
DENN ENGINEERS  
3914 DEL AMO BLVD., #921  
TORRANCE, CA 90503

Certified to be a true and  
correct copy of the original:

Recorded: 2-20-2014  
As Inst. No. 20140177794  
of Official Records.

By: Maria Beredo  
Fidelity National Title Co.

SHEET 1 OF 8 SHEETS

CONDOMINIUM PLAN  
FOR  
PARCEL 1, PARCEL MAP NO. 71834  
IN THE CITY OF MANHATTAN BEACH  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

AS PER MAP FILED IN BOOK 375 PAGES 56 AND 57 OF PARCEL MAPS IN THE OFFICE OF  
COUNTY RECORDER OF SAID COUNTY, DIAGRAMMATIC FLOOR PLANS OF THE BUILDINGS  
AS BUILT ON SAID LAND AND CERTIFICATE AS REQUIRED BY CALIFORNIA CIVIL CODE  
SECTION 4285 AND 4290.

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF, RECORD HOLDERS OF SECURITY  
INTERESTS THEREIN, OR ARE INTERESTED IN THE LAND INCLUDED WITHIN THE PROJECT  
SHOWN ON THIS MAP AND THAT WE CONSENT TO THE RECORDATION OF THIS PLAN  
PURSUANT TO CHAPTER 1, PART 5, DIVISION 4, OF THE CIVIL CODE.

MB SURF DEVELOPMENT LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY  
(OWNER)

BY: Christine R. Mirick  
CHRISTINE R. MIRICK, MEMBER

CALIFORNIA BANK & TRUST  
(BENEFICIARY)

RECORD HOLDER OF BENEFICIAL INTEREST UNDER DEED OF TRUST RECORDED  
SEPTEMBER 28, 2012 AS INSTRUMENT NO. 20121461547, OFFICIAL RECORDS.

BY: Maria L. Cedeno  
MARIA L. CEDENO, VICE PRESIDENT

CONDOMINIUM PLAN  
FOR PARCEL 1, PARCEL MAP NO. 71834  
ACKNOWLEDGEMENTS

STATE OF CALIFORNIA

COUNTY OF Orange

ON January 16, 2014 BEFORE ME, Carolyn R. Brummer

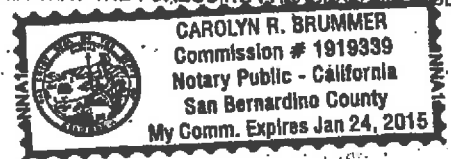
A NOTARY PUBLIC, PERSONALLY APPEARED Maria L Cedeno

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 PERSONS(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



STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ON JANUARY 28, 2014 BEFORE ME, FRANCENE D. URALMAN

A NOTARY PUBLIC, PERSONALLY APPEARED CHRISTINE R. MIRICK

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 PERSONS(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



STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

ON \_\_\_\_\_ BEFORE ME, \_\_\_\_\_

A 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 PERSONS(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 \_\_\_\_\_

CONDOMINIUM PLAN  
FOR  
PARCEL 1, PARCEL MAP NO. 71834  
GENERAL NOTES AND DEFINITIONS


1. This condominium project is composed of a common area and 2 units.
2. The common area of this project is the land and real property, including all improvements constructed thereon within the boundary lines of Parcel 1 of Parcel Map No. 71834 in the City of Manhattan Beach, County of Los Angeles, State of California, as per parcel map filed in Book 375 Pages 56 and 57, inclusive, of Parcel Maps, in the office of the County Recorder of said county, except there from those portions shown and defined herein as units 1 through 2, inclusive.
3. The following are not part of a unit: bearing walls, columns, vertical supports, floors, roofs, foundations, beams, balcony railings, pipes, ducts, flues, chutes, conduits, wires, and other utility installations, wherever located except the outlets thereof when located within the unit.
4. A unit shall mean a separate interest in space and includes that spatial element of a condominium which is not owned in common with other owners of other condominiums in the project the boundaries of which are shown and defined herein. The units of this project are numbered 1 through 2, inclusive. A unit consists of all of those elements bearing an identical number designation. The prefix number designation of an element coincides with the number of that unit of which it is a part. The suffix number designation of an element coincides with the level upon which such element is located. Whenever reference is made to any of Units 1 through 2, inclusive, it shall be construed that reference is made to the unit as a whole and to each and all of its component elements.
5. This plan and the dimensions shown hereon are intended to conform to Civil Code Section 4285 which requires diagrammatic floor plans of the building built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions. The dimensions shown hereon are not intended to be sufficiently accurate to use for computation of floor area or airspace volume in any or all of the units.
6. These diagrammatic plans intentionally omit detailed information of internal partitioning within individual units. Likewise, such details as protrusions of vents, beams, columns, window casings, and other such features are not intended to be reflected on this plan.
7. Each of those areas shown on this plan bearing the letter designation "A" is an element of a unit consisting of a dwelling area. The lateral boundaries of each such element are the interior surfaces of the perimeter walls, windows and doors thereof at the limits indicated on the respective portions thereof. The lower vertical boundary of each such element is the interior surface of the floor thereof and the upper vertical boundary of each such element is the interior surface of the ceiling thereof, both at the limits shown hereon. Each such element includes the respective portions of the building and improvements lying within said boundaries (except as stated in Note 3 above) and the airspace so encompassed.

CONDOMINIUM PLAN  
FOR  
PARCEL 1, PARCEL MAP NO. 71834

8. Each of those areas shown on this plan bearing the letter designation "D" and "D'" or "GP" is a portion of the exclusive use common area consisting of a deck or guest parking space, respectively. The lateral and vertical boundaries of each such area are the exterior surfaces of the perimeter walls, windows, and doors of the adjacent building structure, where such surfaces adjoin such area and the interior surfaces of the perimeter walls, floors, and ceilings of each such area where such surfaces exist. Otherwise, the lateral and vertical boundaries of each such area are vertical and horizontal planes at the dimensions and elevations shown hereon for each such area where such surfaces exist. Each such area includes only the airspace encompassed by said boundaries for the unit bearing the identical number designation.
9. Each of those areas shown on this plan bearing the letter designation "G" is an element of a unit consisting of a garage area. The lateral boundaries of each such element are the interior surfaces of the perimeter walls, windows, and doors thereof at the limits indicated on the respective portions thereof. The lower vertical boundary of each such element is the interior surface of the floor thereof and the upper vertical boundary of each such element is the interior surface of the ceiling thereof, both at the limits shown hereon. Each such element includes the respective portions of the building and improvements lying within the said boundaries (except as stated in Note 3 above) and the airspace so encompassed.
10. The upper vertical limit of each element and exclusive use common area is a horizontal plane described as "U.E." The lower vertical limit of each element and exclusive use common area is a horizontal plane described as "L.E."
11. Included as parts of an element are those areas, if any, which lie between the upper limits, shown as U.E. hereon, and the finished ceilings above the upper limits and within the horizontal dimensions of said elements.
12. All ties to elements are at right angles to the lines they join, unless otherwise indicated. Element and exclusive use common area boundary lines intersect at right angles or 135 degree angles, unless otherwise indicated.
13. Common walls between units are 0.8' thick unless otherwise specified. All other walls are 0.4' thick unless otherwise specified.
14. Each of those areas shown on this plan bearing the letter designation "Y" or "DW" is a portion of the exclusive use common area consisting of a yard area or driveway, respectively. The lateral and vertical boundaries of each such area are the exterior surfaces of the perimeter walls, windows, and doors of the adjacent building structure, where such surfaces adjoin such area and the interior surfaces of the perimeter walls, floors, and ceilings of each such area where such surfaces exist. Otherwise, the lateral and vertical boundaries of each such area are vertical and horizontal planes at the dimensions and elevations shown hereon for each such area where such surfaces exist. Each such area includes only the airspace encompassed by said boundaries for the unit bearing the identical number designation.

CONDOMINIUM PLAN  
FOR  
PARCEL 1, PARCEL MAP NO. 71834  
CERTIFICATIONS

I hereby certify that I am a professional registered civil engineer of the State of California and that this condominium plan, consisting of 8 sheets, represents the boundary of the land included within this project and the "as-built" location of the units therein based upon construction plans and field inspection.

  
Gary J. Roehl R.C.E. 30826



BENCHMARK:

S&W at the intersection of 32<sup>nd</sup> Street and Alma Avenue as shown on Parcel Map No. 71834 as filed in Parcel Map Book 375 Pages 56 and 57. Assumed elevation is 93.11'

BASIS OF BEARING:

The bearings shown hereon are based on a bearing S 70°17'12" W of the centerline of 32<sup>nd</sup> Street as shown on Parcel Map No. 71834 as filed in Parcel Map Book 375 Pages 56 and 57.

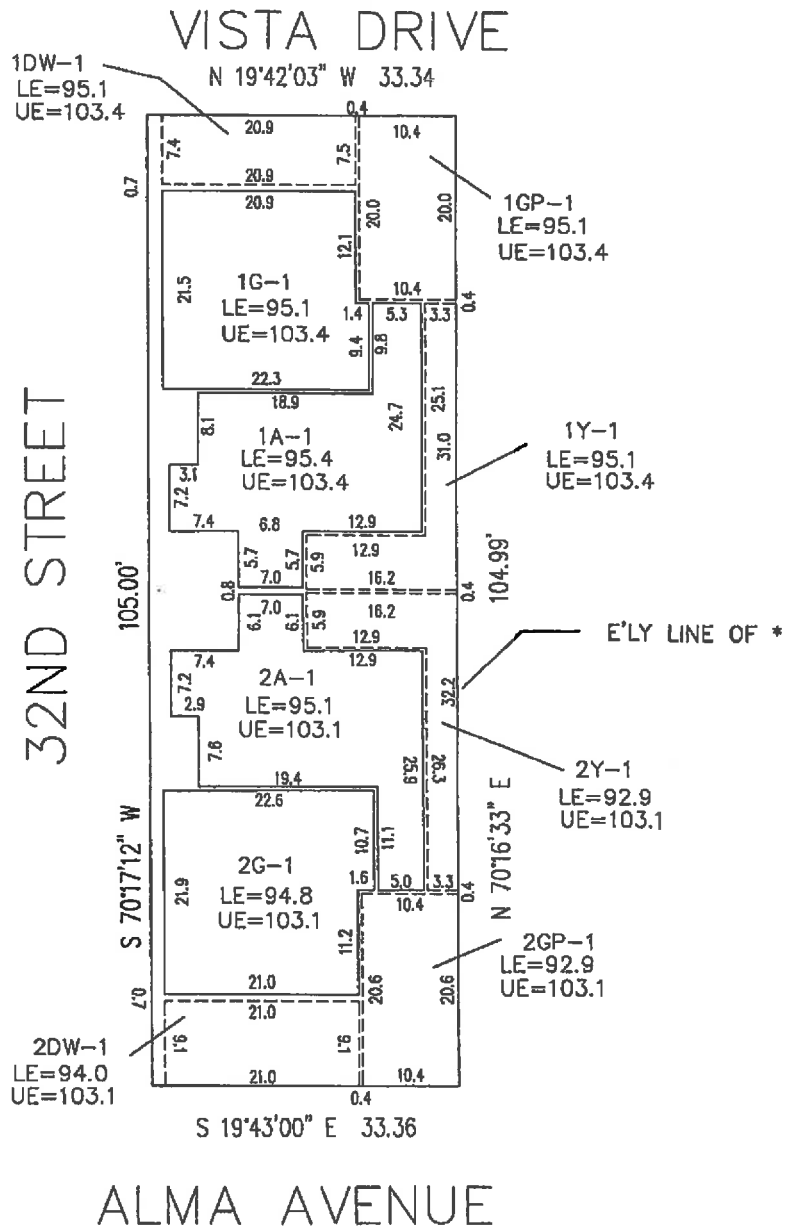
SCALE: 1" = 20'

# CONDOMINIUM PLAN

SHEET 6 OF 8

FOR  
PARCEL 1, PARCEL MAP NO. 71834  
FIRST LEVEL

\* PARCEL 1, PARCEL MAP NO. 71834





SCALE: 1" = 20'

# CONDOMINIUM PLAN

SHEET 8 OF 8

FOR

PARCEL 1, PARCEL MAP NO. 71834

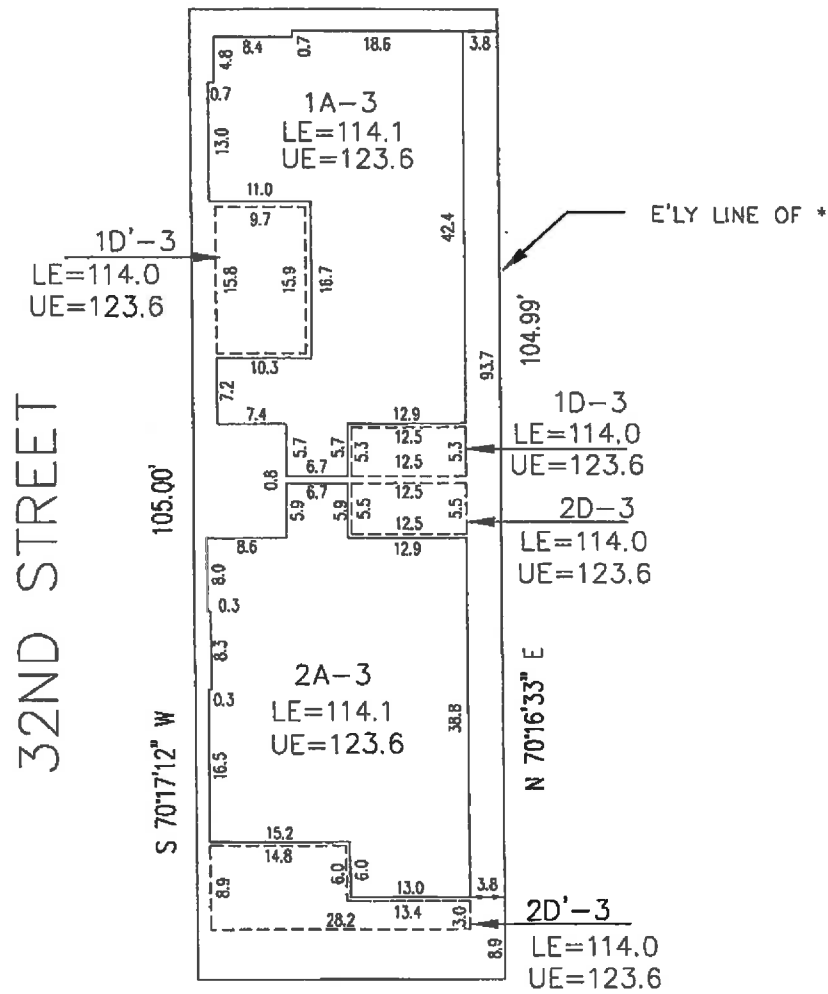
THIRD LEVEL

\* PARCEL 1, PARCEL MAP NO. 71834



## VISTA DRIVE

N 19°42'03" W 33.34



RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

LAW OFFICES OF CRAIG D. WEINSTEIN  
1001 6<sup>th</sup> Street, Suite 110  
Manhattan Beach, CA 90266

Certified to be a true and  
correct copy of the original:

Recorded: 2-20-2014  
As Inst. No. 20140177795  
of Official Records.

By: Anna Bonato  
Fidelity National Title Co.

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Space Above for Recorder's Use

**NOTICE OF NON-ADVERSARIAL PROCEDURE; NOTICE TO SUCCESSORS  
IN INTEREST AND SUBSEQUENT PURCHASERS; AND NOTICE OF BUILDER'S AGENT FOR  
NOTICE UNDER CALIFORNIA CIVIL CODE SECTIONS 912(f), 912(h), AND 912(e)**

This Notice of Non-Adversarial Procedure, Notice to Successors in Interest and Subsequent Purchasers; and Notice of Builder's Agent for Notice (collectively, the "Notice"), dated as of January 14, 2014, is made by MB SURF DEVELOPMENT, LLC, a California Limited Liability Company ("Builder), with reference to the facts set forth below.

**RECITALS**

A. Builder is the builder of that certain residential project located in California and more particularly described in the legal description attached hereto as Exhibit "A" (the "Property").

B. California Civil Code Sections 895 et. seq. (the "Right to Repair Law") sets forth functionality standards for residential construction, design, specifications, surveying, planning, supervision, testing, and observation of construction with respect to any original construction. Chapter 4 of the Right to Repair Law (California Civil code Section 910-938) establishes certain non-adversarial dispute resolution procedures that an owner of a single-family home, an individual unit owner of attached dwellings or, in the case of a common interest development, an association as defined in subdivision (a) of California Civil Code Section 1351 must initiate before taking further legal action against any party alleged to have contributed to a violation of the standard set forth in the Right to Repair Law.

C. Builder is required to record notice of the existence of non-adversarial procedures applicable to certain construction defect claims against the Property and that these procedures impact the legal rights of buyers with respect to the Property pursuant to California Civil Code Section 912(f).

D. Builder desires to provide notice to all subsequent purchasers of any portion of the Property of their rights under Chapter 4 of the Right to Repair Law and of certain other obligations to deliver certain documents to subsequent purchasers of any portion of the Property under California Civil Code Section 912(h).

E. Builder desires to provide notice to purchasers and all subsequent purchasers of any portion of the Property of Builder's agent for notice under California Civil code Section 912(e).

NOW THEREFORE, Builder provides notice as follows:

1. Non-Adversarial Procedure. Pursuant to California Civil code Section 912(f), notice is hereby given by Builder that Builder has elected to adopt the non-adversarial procedures set forth in California Civil Code Section 910 through 938, which apply to certain claims which might arise regarding the Property and that these procedures impact the legal rights of buyers with respect to the Property. According to the terms of the Right to Repair law, buyers are required to proceed through the statutory non-adversarial procedures prior to taking further legal action. According to the terms of the Right to Repair law, the non-adversarial procedures will not apply if Builder does not comply with the requirements set forth therein if a claim arises and the parties will then proceed to arbitration under the purchase agreement or other applicable documents. Should the parties not be able to resolve the dispute through the statutory non-adversarial procedures (including mediation), the matter will then be resolved through a judicial reference, which shall be binding upon both parties.

In addition to being described in this recorded notice, detailed written documentation shall have been provided to the original homeowner of the Property by Builder in the form of a Warranty document and other Documents (defined below) and such Documents have become or will become binding on the homeowners.

Subsequent purchasers are hereby notified that in accordance with the terms set forth in the original homeowner's purchase agreement or in any other applicable contract documents that the original homeowner executed, the purchase agreement and other contract documents contained an arbitration provision which binds subsequent purchasers of the Property.

2. Subsequent Purchasers of the Property. Pursuant to California Civil Code Section 912(h), notice is hereby given by Builder that at the time of purchase or prior to the date of the close of escrow between Builder and the original homeowner of the Property ("Close of Escrow"), the original homeowner of the Property received certain documents from Builder which each homeowner shall provide to successors in interest and/or subsequent purchasers. These

documents include various documents provided by Builder to the original homeowner which may include but are not limited to: (a) Builder's limited warranty agreement, which is intended to satisfy the requirements of California Civil Code section 900, (b) a homeowner maintenance guide and/or other maintenance or preventative maintenance information, (c) maintenance and limited warranty information for Manufacturer-Warranted Products as such term is defined in Builder's warranty, and (d) any other documents provided in conjunction with the original sale of any portion of the Property by Builder (collectively, the "Documents"). The original purchaser of any portion of the Property is hereby informed that the original purchaser shall maintain full and complete copies of the Documents and provide the Documents to any successors in interest and/or subsequent purchasers. Successors in interest and/or subsequent purchasers of any portion of the Property are hereby notified that they should obtain the Documents from the seller of such portion of the Property. Successors in interest and/or subsequent purchasers should request full and complete copies of these Documents from the seller of the Property as these documents contain important information which affects successors in interest and/or subsequent purchasers' legal rights in connection with any portion of the Property and should be given to subsequent successors in interest and/or subsequent purchasers.

3. Builder's Agent for Notice. Pursuant to California Civil Code Section 912(e), notice is hereby given by Builder that, as of the date this Notice has been recorded, Builder's Agent for Notice to whom right to Repair Law claims and requests for information should be submitted is:

MB SURF DEVELOPMENT, LLC  
LARRY T. AND CHRISTINE R. MIRICK  
3120 Alma Avenue  
Manhattan Beach, CA 90266

This contact informant is subject to change. The name and address of Builder's agent under Civil Code Section 912(e) is also available at the office of the California Secretary of State. To ensure that your notice is delivered to Builder at its correct address, homeowner is advised to confirm the current name and address of Builder's agent with the Secretary of State before delivering notice.

4. Preparation of Notice Memorandum. This Notice is prepared for the purposes of (a) providing the recordation of notice of non-adversarial procedures that apply to certain construction defect claims relating to the Property, (b) providing notice of the obligations of all owners, successors in interest and/or subsequent purchasers of any portion of the Property to provide copies of the Documents to successors in interest and/or subsequent purchasers and (c) providing notice of Builder's agent for notice.

5. Amendment or Revocation. Prior to the close of escrow of any residential unit, lot or condominium (as applicable) on the Property, Builder shall have the unilateral right to revoke or amend this Notice as it relates to such residential unit, lot, or condominium (as applicable) on the Property by recording an instruction amending or revoking this Notice and any such amendment or revocation shall not impair the effect of this Notice as to any other portion of the Property not covered by the amendment or revocation. No lender consents shall be required as a condition to any such revocation or amendment.

IN WITNESS WHEREOF, Builder has executed this Notice as of the date first above written.

MB SURF DEVELOPMENT, LLC,  
a California Limited Liability Company

Dated: January 14, 2014

By: *Christine R. Mirick*  
CHRISTINE R. MIRICK, Member

State of California )

ss.

County of Los Angeles )

On January 14, 2014 before me, Francene D. Uralman, Notary Public, personally appeared CHRISTINE R. MIRICK who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.



*Francene D. Uralman*

**EXHIBIT "A"**  
**Legal Description of Property**

PARCEL 1 OF PARCEL MAP 72043, IN THE CITY OF  
MANHATTAN BEACH, COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA AS PER MAP FILED IN BOOK  
375, PAGES 56 AND 57, INCLUSIVE, OF PARCEL  
MAPS IN THE OFFICE OF THE COUNTY RECORDER  
OF LOS ANGELES COUNTY.