

This page is part of your document - DO NOT DISCARD



20170241862



Pages:
0066

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

03/01/17 AT 08:00AM

FEES:	210.00
TAXES:	0.00
OTHER:	0.00
PAID:	210.00



LEADSHEET



201703010170007

00013422821



008177024

SEQ:
25

DAR - Title Company (Hard Copy)



THIS FORM IS NOT TO BE DUPLICATED

T23

LAWYERS TITLE

2

RECORDING REQUESTED BY
Lawyers Title
AND WHEN RECORDED MAIL TO:
Padma Makineni
2 Openbrand Road
Rolling Hills, California 90274-5231



Space above this line for Recorder's use

65

Declaration of Covenants, Conditions, Restrictions and Reservation of Easements
For
Temple Ave Homes - Parcel Map No. 72651
(A Condominium Project)

DOCUMENT TITLE

SEPARATE PAGE - PURSUANT TO GOVERNMENT CODE 27361.6

251

RECORDING REQUESTED BY:

114040140

LAWYERS TITLE

AND WHEN RECORDED MAIL TO:

Padma Makineni
2 Openbrand Road
Rolling Hills CA 90274-5231

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS**

FOR

TEMPLE AVE HOMES - PARCEL MAP NO. 72651

(A Condominium Project)

**THIS DECLARATION CONTAINS A CONSTRUCTION DEFECT CLAIMS AND RESOLUTION
PROVISION WITH A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY TRIAL.
YOU MUST READ THE PROVISION CAREFULLY (ARTICLE XIV, PAGE XIV-4,
SECTION 14.10, AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.**

[CS2Unit: 01-27-14]
[This Set: 02/20/17]

Document Prepared By:
Murakami Law Office
371 Van Ness Way, Suite 130
Torrance, CA 90501
Tel: (310) 961-5260

TABLE OF CONTENTS

Article

Description

RECITALS

I DEFINITIONS

II DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY

- 2.01 Units
- 2.02 Common Area
- 2.03 Exclusive Use Common Area
- 2.04 Repair and Maintenance of the Property by Owner
- 2.05 Repair and Maintenance of the Property by Association
- 2.06 Association Insurance
- 2.07 Owner Insurance
- 2.08 Inspections by Declarant

III OWNERS GENERAL USE RESTRICTIONS

- 3.01 Unit Use
- 3.02 Common Area Use
- 3.03 Nuisances
- 3.04 Debris, Trash, Refuse and Hazardous Materials
- 3.05 Signs
- 3.06 California Vehicle Code and Parking Regulations
- 3.07 Pet Regulations
- 3.08 Antennas, Satellite Dishes, and Other Transmission Devices
- 3.09 Window Covers
- 3.10 Exterior Clotheslines
- 3.11 Air Conditioners and Other Equipment
- 3.12 Balcony Restrictions
- 3.13 Drains Located on Balconies
- 3.14 Large Water Containing Receptacles
- 3.15 Indemnity by Owner
- 3.16 Use/Alteration Affecting Insurance Rates
- 3.17 Sound Attenuation
- 3.18 Declarant's Exemption from Use Restrictions

<u>Article</u>	<u>Description</u>
IV	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS
4.01	Organization
4.02	Membership
4.03	Voting Rights and Requirements
4.04	Transfer of Membership
V	DUTIES AND POWERS OF THE ASSOCIATION
5.01	Commencement of Duties
5.02	Specific Association Duties and Powers
5.03	Authority of Board to Alter Boundaries of Condominiums
5.04	Right of Entry
VI	COVENANTS FOR ASSESSMENT
6.01	Assessments
6.02	Commencement; Due Dates of Assessments
6.03	Equal Assessment Rate
6.04	Assessment Duties of the Board of Directors
6.05	Effect of Nonpayment of Assessments; Delinquency and Remedies of the Association
6.06	Collection of Assessment Debts Not Collectible Through Foreclosure
6.07	Reserves
6.08	Right of Redemption
6.09	Nonuse and Abandonment
6.10	Emergency Assessments
6.11	Waiver of Exemptions
VII	ARCHITECTURAL CONTROL
7.01	Approval by the Board
7.02	Certain Procedures for the Board
7.03	Enforcement by Owners
7.04	No Waiver
7.05	No Liability
7.06	Review Standards
7.07	Rules and Regulations
7.08	Compensation of Members

<u>Article</u>	<u>Description</u>
VIII	MORTGAGEE PROTECTION
8.01	Subordination of Lien and Foreclosure
8.02	Mortgagees Are Not Required to Cure Certain Breaches
8.03	Effect of Breach of Declaration
8.04	Exemption from Right of First Refusal
8.05	Restrictions on Certain Changes
8.06	Inspection of Association Books and Records
8.07	Condemnation Awards and Insurance Proceeds
8.08	Loss Payable Endorsement
8.09	Mortgagee's Right to Attend Meetings
8.10	Payments by Mortgagees
8.11	Notices to Mortgagees
8.12	Loan to Facilitate Resale
8.13	Control if Mortgagee Protections Conflict with Other Provisions
IX	DESTRUCTION OF IMPROVEMENTS
9.01	Restoration of the Property.
9.02	Notice to Owners and Listed Mortgagees.
9.03	Sale of Property and Right to Partition.
9.04	Damage to Dwellings
X	CONDEMNATION
10.01	Representation by Board in Condemnation Proceeding
10.02	Distribution of Award
XI	COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST
11.01	No Partition; Exceptions
11.02	No Separate Conveyance of Condominium Components
XII	EASEMENTS
12.01	Creation of Easements
12.02	Reservation of Easements for Declarant's Construction and Marketing Activities
12.03	Certain Easements for Association
12.04	Certain Easements for Owners
12.05	Drainage Easements
12.06	Encroachment

7

<u>Article</u>	<u>Description</u>
XIII	AMENDMENT
13.01	Amendment
XIV	ENFORCEMENT AND DISPUTE RESOLUTION
14.01	Enforcement of Governing Documents
14.02	Enforcement Between Association and Owner
14.03	Failure Not a Waiver
14.04	Discipline for Breach
14.05	Notice and Hearing
14.06	Remedies Cumulative
14.07	Joint and Several Liability
14.08	Special Provisions Applicable to Resolution of Construction Defect Disputes; Declarant's Election to "Opt In" to Statutory Pre-Litigation Procedures
14.09	Resolution of Construction Defect Disputes Against Declarant
14.10	Submission of All Disputes Involving Declarant, Including Construction Defect Disputes, to Judicial Reference
XV	MISCELLANEOUS PROVISIONS
15.01	Term of Declaration
15.02	Notices
15.03	Partial Invalidity
15.04	Number
15.05	Attorneys' Fees
15.06	Disclosures
15.07	Declarant's Rights After Sale of Both Units in the Project
15.08	Supremacy of Legislation
15.09	No Enhanced Protection Agreement
15.10	Changing the Project Marketing Name
15.11	Conflict Between Declaration and Condominium Plan

EXECUTION PAGE

EXHIBIT A - PROPERTY

EXHIBIT B - MAINTENANCE RESPONSIBILITIES

8

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR
TEMPLE AVE HOMES**

This Declaration is made by **PADMA MAKINENI, spouse of Rao Makineni** ("Declarant").

RECITALS

- A. Declarant is the owner in fee of that certain real property ("Property") in the City of Long Beach, County of Los Angeles, State of California, legally described in attached Exhibit "A".
- B. Declarant has developed the Property into a Condominium project ("Project") under the provisions of California Civil Code Section 4125.
- C. Declarant desires to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.
- D. This Declaration, and all Governing Documents for this Property, shall be deemed in full force and effect upon recordation of the first Grant Deed conveying fee title of a Condominium to an Owner in the Property.

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 Civil Code Section 5975 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

*Article I provides definitions of the terms commonly used in this Declaration.
Defined terms are capitalized throughout the Declaration.*

The following definitions apply unless otherwise required by the context:

"Alternative Dispute Resolution" - Resolution of disputes arising out of claims of violations of Governing Documents in which Declarant and/or the Association and/or one or more Owners are parties, as set forth below in the Article entitled "*Enforcement and Dispute Resolution*".

"Approval" - Prior written approval.

"Board" - The committee created pursuant to the Article herein entitled "*Architectural Control*".

"Architectural Guidelines" - The rules and standards adopted by the Board pursuant to the Section hereof entitled "Architectural Guidelines" in the Article hereof entitled "*Architectural Control*".

"Articles" - The Articles of Incorporation of the Association, including any amendments.

"Assessments" - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

"Association" - Temple Ave. Homes, a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

"Board" or **"Board of Directors"** - The governing body of the Association.

"Bylaws" - The Bylaws of the Association, including any amendments.

"Claim" - An assertion that there is a violation of the Governing Documents for the Project or that a construction defect exists in the Property.

"Claimant" - Any Owner of a Unit or the Association in this Project who asserts a claim.

"Code Section" - Refers to Codes of the State of California (e.g. "Civil Code", "Vehicle Code"). Reference to any specific Code Section includes any future successor Code Sections. Any applicable new legislation or future amendment of any Code Section referenced in this Declaration shall automatically amend this Declaration in the same way, without necessity for execution and recording of any amendment to this Declaration.

"Common Area" - The entire Property (including land and improvements) other than the Units described in this Declaration and the Condominium Plan.

"Common Expenses" - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

"Compliance Assessment" - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

"Condominium" - An estate in real property (defined in Sections 783 and 4125 of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area.

"Condominium Plan" - The recorded diagrammatic drawings of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 4285.

"Declarant" - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure. Successor means a natural individual or any legal entity who acquires Declarant of substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, by operation of law or otherwise. Declarant has the right to determine in its sole discretion, that manner in which it transfers its obligations and rights reserved to it under this Declaration.

"Declarant Parties" - Declarant, developer, builder, general contractor, subcontractor and/or design professional who have participated in the development of the Project, or any insurer of any such party; a Declarant Party may be a Claimant or Respondent, as the case may be.

"Declaration" - This document and any amendments hereto.

"Deed of Trust" - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

"Dispute" - Any unresolved Claim, dispute or disagreement concerning the Property or the Governing Documents for the Development, arising among Owners, Association, and/or Declarant Parties.

"Eligible First Mortgagees" - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

"Exclusive Use Common Area" - Those portions of the Common Area designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

"Family" - (a) one or more natural individuals related to each other by blood, marriage or adoption, domestic partnership or (b) a group of natural individuals not all so related, but who live as a common household in a Unit, such as roommates.

"FHA" - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

"FHLMC" - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

11

"First Close of Escrow" - The date on which the first deed is recorded conveying fee title to a Condominium to the first Owner.

"First Mortgage" or "First Mortgagee" - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

"FNMA" - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

"Foreclosure" - The legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

"Governing Documents" - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan, any maintenance manuals, and any Rules and Regulations.

"Grant Deed" - A written instrument transferring title to real property.

"Improvements" - Any structure or anything attached to a structure or to the land within the Project, consistent with the provisions of Business and Professions Code Section 7151.

"Manager" or "Managing Agent" - The party contractually engaged by the Association or Declarant to manage the Common Area and perform other duties of the Association.

"Member" - Any person who is an Owner based upon the provisions of the Governing Documents.

"Mortgage" - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

"Mortgagee" - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

"Mortgagor" - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

"Notice and a Hearing" - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

"Owner" or "Owners" - The person(s) or legal entity holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser(s) of a Condominium under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Condominium merely as security for the performance of an obligation.

"Party(ies)" - The Claimants and Respondents in a proceeding to resolve a Claim.

"Person" - A person, partnership, corporation, trustee or other legal entity.

"Project" or **"Property"** - The real property described in Exhibit "A" to this Declaration. The Project is a "Condominium Project" as defined in Section 4125 of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 4100 of the California Civil Code.

"Quorum" - A quorum shall exist for business transactions only when both Members are present or represented by proxy, except as otherwise specifically provided in this Declaration or the Bylaws of the Association.

"Regular Assessments" - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

"Respondents" - Any party against whom a Claim is made.

"Rules and Regulations" - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

"Special Assessments" - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

"Total Voting Power" - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

"Trustor" - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

"Unit" - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 4125. Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified.

"VA" - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

13

ARTICLE II

DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY

Article II defines the extent of a condominium and of common areas, including portions of the common area which owners of a condominium are exclusively entitled to use, and assigns maintenance and insurance obligations to the owners and the Association respectively.

Ownership of each Condominium shall include a Unit, an undivided interest in the Common Area, membership in the Association, and any Exclusive Use Common Area appurtenant to such Unit.

2.01 Units.

The Project consists of two (2) residential Units. Each Unit consists of all elements and areas identified as such on the Condominium Plan.

2.02 Common Area.

- (a) The Property not constituting the Units is the Common Area.
- (b) Each Owner of a Condominium in the Property will receive the following undivided interest in the Common Area in the Property: one-half (1/2).

2.03 Exclusive Use Common Area.

Exclusive Use Common Area include portions of the Common Area designed to serve a particular Unit but located outside the boundaries of the Unit, as set forth in Civil Code Section 4145, if not shown and designated as such on the Condominium Plan.

2.04 Repair and Maintenance of the Property by Owner.

- (a) In accordance with the Governing Documents, each Owner must maintain, repair, replace, and keep in good orderly condition the Unit and specifically all of those items set forth in Exhibit "B".
- (b) In addition to those items set forth in Exhibit "B", each Owner shall be jointly liable and responsible for any costs of corrections due to building or property maintenance code enforcement actions.
- (b) Any damage to any real or personal property in the Project caused by an Owner or an Occupant, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board;
- (c) The Owner shall promptly notify the Association of any problem with the balcony's waterproofing or structure. Owners may not place on the decks/balconies large potted plants or other items which can damage the waterproofing membrane nor indoor/outdoor carpet or tile which can impair the waterproofing and may even change drainage patterns. Any damage to the structure(s) caused by Owner's negligence shall be billed to the Owner.

- (d) No Owner shall make a change to the exterior appearance of a Unit without the prior written approval of the Board in accordance with the Governing Documents and applicable laws.
- (e) Notice and Mitigation Regarding Water Intrusion and Mold. In the event of intrusion of water into any Unit (including, without limitation, as a result of any roof, window, siding, plumbing or other leaks), and whether or not the cause of such leak constitutes a repair issue, the Owner of the affected Unit shall be obligated to immediately notify Declarant and Association of such event, and Owner shall take all necessary and appropriate action to stop any such water intrusion. Declarant and Association shall thereafter have the right to inspect the condition, including the right to assess the likelihood of mold and mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant or Association to take any action, nor shall any rights of Declarant or Association under this Section constitute an admission or acknowledgment that any causes of any water intrusion are the result of defective construction.

Owner's obligation to inspect the Unit for evidence of mold or mildew and to remedy any such infestation is enforceable by the Association. Further, failure of any Owner to timely notify Declarant and Association of any such water intrusion shall be cause to deny future claims against Declarant and Association relating thereto.

- (f) Owner shall notify the Association of any problems that may arise from the air conditioning equipment, heating equipment, or condensers ("HVAC System"). Owner shall not contact an independent repair service and shall not attempt to himself repair or replace the HVAC System. Owner is responsible for payment of all costs incurred for such maintenance and repair. Owner shall make payment directly to the approved contractor.

2.05 Repair and Maintenance of the Property by Association.

- (a) The Association (not individual Owners) is responsible for maintaining, repairing, modifying, replacing, and altering Common Area and facilities, including but not limited to those items as set forth in the attached Exhibit "B".
- (b) In addition to the maintenance of those items set forth in Exhibit "B", the Association shall be responsible for the operation and maintenance of the private sewer connection to the public sewer in the public right-of-way, the site drainage system, the maintenance of the Common Area and facilities, the exterior of the building, the abutting street trees, parkways, and any costs or corrections due to building or property maintenance code enforcement actions.
- (c) The Association shall cause to be removed, within 24 hours, all graffiti that is placed anywhere on the Common Areas of the Project. The Association, , and its agents and contractors, shall have access upon and over all of the Units in the Project in order to accomplish the same.
- (d) Storm Drains. The Association shall maintain any storm water pollution prevention devices and shall comply with any "best management practices" or other drainage area management plan applicable to the Project.
- (e) The Association shall not be liable for damage in the Project resulting from water unless caused by the gross negligence of the Association, its Board, officers, its manager or staff.

2.06 Association Insurance.

(a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is reasonably prudent to do so:

(1) A master or blanket policy of hazard insurance for the full insurable value of all of the Improvements within the Common Areas. This coverage shall include policy limits of 100% full replacement value of the covered Improvements, excluding foundations, excavations and other items usually excluded from such insurance or endorsements, and shall meet such other requirements as set forth below:

(A) The master policy shall include at a minimum "bare walls" coverage

(B) The policy 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 its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

(C) The policy shall name as insured the Association, Declarant (as long as Declarant owns a Unit), the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the Trustee described hereinafter.

(D) The Board may, after consultation with its insurance professional and if it deems it prudent to do so, purchase coverage with deduction for depreciation and/or coinsurance.

(2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Declarant (as long as Declarant owns a Unit), Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 5800 and 5805.

(3) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of Improvements in case of destruction and a subsequent decision not to rebuild.

(4) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months' aggregate Assessments on all Condominiums 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. Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance Trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.

- (5) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas). If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
 - (6) Director and officer liability insurance ("D&O") in an amount that satisfies Civil Code Section 5800(a). In the absence of gross negligence, intentional misconduct, or fraud, the Association shall indemnify directors and officers from personal liability for claims made as a result of the performance of their duties.
 - (7) Any other insurance policy the Association deems appropriate.
- (b) Association insurance policies shall contain the following provisions, if available:
 - (1) Statements that the policies are primary and non-contributing;
 - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
 - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
 - (4) Standard Mortgagee clause, and name as Mortgagee FNMA or servicer (if applicable).
 - (c) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
 - (d) Each Owner appoints the Association or any insurance Trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.
 - (e) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and the Owners and occupants of the Condominiums and Mortgagees, and all Owners are deemed to have waived subrogation rights as to the Association and/or other Owners, whether or not their policies so provide.
 - (f) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
 - (g) The Association is not obligated to provide intra-Unit public liability insurance or any protection against risks customarily covered under "homeowners" or "broad form homeowners" policies. Owners shall individually insure against such risks.

17

2.07 **Owner Insurance.**

- (a) Each Owner may insure his personal property against loss and obtain any personal liability insurance that he desires. The insurance maintained by the Association does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring in the Units. In addition, any Improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance." The Owner shall not obtain such insurance if the Association policy will provide coverage for such Improvements.
- (b) As the Association provides a "bare-walls" type of policy, each Owner may purchase a "walls-in" coverage policy and provide insurance for all Improvements to the interior of the Unit, such as a condominium unit policy with an extension for interior building improvements and/or betterments. 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 mortgagee of such Condominium.
- (c) It is each Owner's responsibility, if desired, to obtain loss assessment coverage for certain future Special Assessments, earthquake insurance and any other available insurance.

2.08 **Inspections by Declarant.**

For a period of ten (10) years after the last sale by Declarant, Declarant shall, in its sole discretion, be entitled to inspect all Common Areas of the Property with or without notice to the Association and shall, within its sole discretion and at its expense, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. Also in its sole discretion, Declarant may request permission to inspect individual Units for the sole purpose of discovering and repairing structural defects. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

18

ARTICLE III

OWNERS GENERAL USE RESTRICTIONS

Article III defines the manner in which residential condominiums may be used.

3.01 Unit Use.

- (a) A Unit may only be used for a single family dwelling.
- (b) An Owner may lease a Unit for residential purposes provided:
 - (1) There is a written agreement;
 - (2) The lease states it is subject to all the provisions of the Governing Documents and that any failure to comply with any provision of this Declaration or the other Governing Documents shall constitute a default under the terms of said agreement;
 - (3) A copy of this Declaration is made available to each tenant or lessee by the Owner so leasing;
 - (4) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates;
 - (5) Tenants/lessees/Occupants shall have no voting rights in the Association;
 - (6) No Owner may lease a Unit for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration;
 - (7) Owners, at all times, are responsible for their tenant's or lessee's compliance with all of the provisions of the Governing Documents in the occupancy and use of the Units; and
 - (8) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights pursuant to the Article entitled "*Easements*" herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Unit.

19

3.02 **Common Area Use.**

- (a) Common Area and Exclusive Use Common Area, if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.
- (b) Any Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Condominium, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

3.03 **Nuisances.**

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.
- (d) Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and other family members or persons residing in or visiting his or her Unit. Any damage to the Common Area, personal property of the Association, or property of another Owner, caused by such children or other family members or persons residing or visiting shall be repaired at the sole expense of the Owner of the Unit where such children or other family members or persons are residing or visiting.

3.04 **Debris, Trash, Refuse and Hazardous Materials.**

- (a) Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area.
- (b) No person shall discharge into the Project's sewer system, storm drain or any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, or welfare of an Occupant, or violate any law.

3.05 **Signs.**

- (a) For up to five (5) years from the First Close of Escrow in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) All Owners are subject to Civil Code Sections 4705 and 4710 in regard to the display of non-commercial flags, banners, signs and posters. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the City.
- (d) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.

3.06 **California Vehicle Code and Parking Regulations.**

- (a) Authorized Vehicles. The following vehicles are authorized within the Property: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "Authorized Vehicles"). Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles.
- (b) Prohibited Vehicles. The following vehicles are prohibited within the Property: recreational vehicles (e.g. motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g. stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board (collectively, "Prohibited Vehicles").

Prohibited Vehicles shall not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other Common Area parking area, except for brief periods for loading, unloading, making deliveries, emergency repairs, or unless specifically authorized by the Board.

- (c) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658 (or any successor statute regarding removal of parked cars and required warning signs). The Association may establish "Parking" and "No Parking" areas within the Common Area, in accordance with California Vehicle Code Section 22658 (or successor statute).

- (d) The Association (through the Board) may establish parking Rules and Regulations.
- (e) A minimum of four (4) parking spaces shall be permanently maintained as parking facilities for the Project. The spaces shall be permanently assigned to a specific unit and labeled thusly or assigned as guest parking and labeled thusly. Parking spaces must be used solely for the parking of personal vehicles. Parking spaces may not be leased, subleased, sold or given to others not a resident(s) of the Unit within the Project.

3.07 **Pet Regulations.**

- (a) A maximum of one (1) domesticated pet, as defined in Civil Code Section 4715, may be kept in a Unit, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times. The Board may establish rules and regulations governing size, weight and number restrictions of animals that may be allowed in the Project.
- (b) In addition, small domesticated pets (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes.
- (c) No pets shall be permitted to become a nuisance or create any unreasonable disturbance. If a pet is determined to constitute a nuisance pursuant to the Section entitled "Nuisances," the Board may carry out enforcement measures, including fines and permanent removal of the animal from the Project.
- (d) A pet may only enter the Common Area while on a leash not to exceed six (6) feet in length that is held by a person capable of controlling it. No pet may be tied or left unattended in any Common Area.
- (e) Owners and Occupants must prevent their pets from soiling the Common Area, and shall promptly clean up any waste left by their pets.
- (f) The Owner of the Unit where the pet is kept shall be responsible for any damage to the Common Area caused by the pet. Any damage caused by cleaning materials or any attempt to remedy such damage shall be the full financial responsibility of said Owner. Each Owner of a pet shall have sole liability for all damages claimed by any person harmed by such pet, and shall defend, indemnify and hold harmless all other Owners, Declarant (as long as Declarant owns a Unit), the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.
- (g) Occupants must obtain approval from the Unit Owner before keeping pets in the Unit. The Owner shall be responsible for an Occupant's compliance with any Rules and Regulations regarding animals within the Project. Both the Occupant(s) and Owner of the Unit shall have joint and several liability for any damage, including personal injury and property damage, claimed by any person harmed by such pet.
- (h) No domestic dog shall be within the Property that has, when unprovoked:
 - (1) Bitten a person
 - (2) In an aggressive manner, it inflicted injury on or killed a human being;
 - (3) Been determined, by the Board or local governmental authority, to be potentially dangerous;

- (4) On two separate occasions within the prior 36-month period, engaged in any behavior that required a defensive action by any person to prevent bodily injury when the person and the dog are outside the Unit of the Owner or keeper of the dog; or
- (5) Killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal outside the Unit of the Owner or keeper of the dog.

3.08 **Antennas, Satellite Dishes, and Other Transmission Devices.**

- (a) No television, radio, data transmission poles, antennas, satellite dishes, and like devices or technological evolutions or equivalents of the foregoing, other than those originally installed by the Declarant, shall be constructed, erected or maintained on or within the Project, unless authorized by the Board.
- (b) Notwithstanding the foregoing, all restrictions on the foregoing devices 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 4725.

3.09 **Window Covers.**

Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.10 **Exterior Clotheslines.**

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

3.11 **Air Conditioners and Other Equipment.**

- (a) Air conditioners, heating, cooling, ventilating equipment and all other mechanical, lighting, or electrical devices shall be so operated and located so that they do not disturb the peace, quiet, and comfort of neighboring residents and shall be screened, shielded and/or sound buffered from surrounding Units, streets and other portions of the Common Area. All such equipment must be installed and operated in accordance with all applicable provisions of the local Codes and any other applicable requirements.
- (b) No wiring insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on any Unit.

3.12 **Balcony Restrictions.**

Balconies appurtenant to an Owner's Unit shall not be used for storage purposes and shall be kept free of clutter and debris.

3.13 **Drains Located on Balconies.**

- (a) Each Owner is responsible for the cleaning and maintenance of the drains that lie appurtenant to the balconies of their Unit. Improperly maintained drains may cause water blockage and/or potential flooding which can detrimentally affect other Owner's in adjoining Units. Owners will be held liable for failing to clear the debris, leaves, garbage, dirt and other materials that may obstruct or block these drains and the drains on all adjoining Common Areas.
- (b) Additionally, an Owner may not engage in any activity which could obstruct, damage, impair or alter the flow of water through such drains. Activities include, but are not limited to, interfering with or altering the established drainage pattern, disposing of hazardous substance within the sewer system or drains, placing any object which might otherwise block the flow of water, allowing debris or other matter to accumulate in the drain opening, and/or intentionally or negligently damaging the drain in any manner that might prevent water from freely flowing through the drain. Any damage, losses, or costs incurred due to an Owner's failure to regularly maintain such drains or the intentional or negligent acts of an Owner or an Owner's Occupants or invitees, even if the damage is to a portion of the drain that is otherwise maintained by the Association or another Owner, shall be the responsibility of the Owner.
- (c) All repairs shall be subject to prior approval of the Board and/or according to the standards set forth by the Board in compliance with the terms of this Declaration. An Owner is obligated to promptly notify the Association if an Owner detects damage to such drain units. Should an Owner fail to comply with the regulations set forth in this provision, the Association and/or the Board is authorized to enter Owner's Unit or Exclusive Use Common Area to remedy the violation, and shall be reimbursed by that same Owner for any costs or expenses incurred therefrom.

3.14 **Large Water Containing Receptacles.**

Due to the potential water, mold and other damage that may occur, unless authorized in writing by the Board, no Owner may keep a waterbed, aquarium, Jacuzzi tub, or other large water containing receptacle intended to hold thirty-five (35) or more gallons of water, within the Owner's Unit.

3.15 **Indemnity by Owner.**

Each Owner shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation for any claims arising from the Owner's and/or Occupant(s)' negligence or willful misconduct for damages sustained including any costs incurred.

3.16 **Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

3.17 Sound Attenuation.

Acoustical privacy is in the mutual interest and benefit of all Owners, lessees, and other Occupants of the Property. Acoustical privacy can only be achieved through understanding and compliance with certain limitations and restrictions. It is recognized that total isolation from an adjacent Unit in a manner comparable to a single-family residence is difficult if not impossible to attain. There will usually be some awareness of one's neighbors. Efforts have been made in the basic design of the Property to alleviate airborne noise, structure-borne noise and impact noise transmission from and to each Unit. Modification of design of the structures or related components thereof by any Unit Owner, or installation of noise generating instruments or equipment, could then alter the resultant expected isolation. The following restrictions are intended to maximize the acoustical privacy of all Owners, lessees and other Occupants of the Property.

- (a) Impacts from Improvements: Noise Study. Any improvement, equipment, or activity which may create noise impacts for any Unit or Common Area shall be subject to the strict noise reduction requirements and guidelines set forth herein and/or in any guidelines adopted by the Association from time to time (the "Noise Guidelines"). The Board shall have the right to request that any Owner desiring to install any such improvements or equipment submit the results of a noise study prepared by a qualified consultant reasonably acceptable to the Board, as applicable.
- (b) The Noise Guidelines shall include, but not be limited to, the following:
 - (1) Acoustical sealant shall be packed around the point of penetration of all pictures and other items hung from the wall that require nailing or screwing.
 - (2) No modifications shall be made to any Unit which would result in a reduction in the minimum impact insulation class of the Unit.
 - (3) Loudspeakers for music reproduction and television sound shall (i) not be supported from or contact made to the party walls, and (ii) shall be elevated from the floor by a proper acoustic platform.
- (c) Prior to installing any improvement, equipment, or performing an activity which may create noise impacts for any Unit, the Owner, lessee or other Occupant of said Unit shall obtain the permission of the other Unit Owner.
- (d) Other Devices. Many other devices or uses or misuses thereof, can likewise be the cause of unacceptable sound or vibration in adjacent Units including, but not limited to, rotating, oscillating or vibrating devices. Owners are forewarned and on notice that the criteria for acoustical privacy set forth herein, shall apply for any condition resulting in annoyance and complaint by other Unit Occupants within the Property.
- (e) Indemnity. In the event that any Owner does not comply with the Noise Guidelines set forth herein, both Owners shall indemnify, defend and hold harmless Declarant and its successors-in-interest from any claims for defects, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) arising out of, caused by, or associated with such non-compliance.

3.18 Declarant's Exemption from Use Restrictions.

- (a) Conveyance of a substantial number of the Units is essential to the establishment and welfare of the Project. In order that all work necessary to complete the Project and to establish a substantially occupied Project may proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:
 - (1) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion of said work;
 - (2) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part of parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential Project and dispose of the same by sale, lease or otherwise;
 - (3) Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof; or
 - (4) Subject Declarant to the architectural control provisions of Article VII for construction of any Unit or other Improvements on the Project.

- (b) The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns one (1) Unit established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Units and the Common Area by Owners, while completing any work necessary to those Units or Common Area.

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Article IV defines owners' membership and voting rights.

4.01 **Organization.**

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Restrictions.

4.02 **Membership.**

Every Owner is automatically an Association member and an officer and director of the Board of the Association. Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

4.03 **Voting Rights and Requirements.**

- (a) Voting rights shall commence for each Condominium within the Project when Assessments against the Condominium have been levied by the Association.
- (b) Co-Owners shall have the following voting rights:
 - (1) Each Co-Owner has an indivisible interest in a single Membership.
 - (2) Each Unit's vote is cast as a single unit, without fraction. If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
 - (3) If a Co-Owner casts a vote representing a certain Condominium, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Condominium.
- (c) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.
- (d) Unless otherwise specifically required, Membership approval requires the unanimous affirmative vote of the Membership.
- (e) No provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which Declarant owns.

21

4.05 **Transfer of Membership.**

- (a) Membership of each Owner shall be appurtenant to the Unit owned, and may only be (and is automatically) transferred upon conveyance of title to a Unit to the new Owner.
- (b) In connection with any transfer or change of ownership of any Unit, the Association and each Owner must comply with Civil Code Section 4525.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas.

5.01 Commencement of Duties.

- (a) The Association's responsibility to maintain Common Areas shall commence upon the First Close of Escrow of a Condominium. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on Common Areas for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments.
- (b) In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in Common Areas, or the acceptance of maintenance responsibilities therefore, the Association shall be obligated to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "*Enforcement and Dispute Resolution*".

5.02 Specific Association Duties and Powers.

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for Common Areas (not including Exclusive Use Common Areas), facilities, and interests, or for the Association subject to the limitations set forth below.
- (c) Borrow money and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if the Condominiums in the Project are taxed under a blanket tax bill covering all of the Condominiums, each Owner shall pay his or her proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date.

- (1) Blanket taxes shall be allocated among the Owners and their Condominiums based upon the prorated square footage of each Unit. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his or her proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply.
- (2) The Association shall pay the taxes on behalf of any Owner who does not pay his or her proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his or her proportionate share of the taxes.

5.03 **Authority of Board to Alter Boundaries of Condominiums.**

If any building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Condominium building may be repaired or reconstructed in a manner that alters the boundaries of the Units and/or Common Areas provided all of the following conditions are satisfied:

- (a) The alteration has been approved by the Board of Directors, and by the holders of any First Mortgages to the extent required herein;
- (b) The Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the Condominium building;
- (c) The alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Owner of such Unit and the holders of any First Mortgages thereon. For purposes of this Declaration, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than five percent (5%) from that which was originally constructed by Declarant;
- (d) The Board has determined that any alteration that will relocate or reduce the Common Areas will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Areas;
- (e) The Condominium Plan is amended to reflect the alteration to the Units or Common Areas; and
- (f) Each Owner hereby irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Common Areas as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instrument.

5.04 **Right of Entry.**

- (a) The Association has the right to enter any Unit or Exclusive Use Common Area to determine compliance with the Governing Documents and to perform its duties, including the duties to maintain the common structure and to enforce the Governing Documents.
- (b) In case of emergency, or by Court order, a Unit may be entered immediately.
- (c) Absent an emergency or Court order, a Unit or its Exclusive Use Common Areas may only be entered at reasonable hours after the Owner has received three (3) days' written notice. The written notice of entry must state explicitly the Association's reason(s) for the necessity to enter any Unit or Exclusive Use Common Area.
- (d) Entry must be made with as little inconvenience as possible to the Owner/Occupant and without a breach of the peace. If the Association has reason to expect a breach of the peace upon entry, it may take such preventive steps as it deems necessary, including obtaining a court order.

ARTICLE VI

COVENANTS FOR ASSESSMENT

Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc.

6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area, administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Condominium remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 5600(b), the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

6.02 Commencement; Due Dates of Assessments.

- (a) Regular Assessments against all Condominiums in the Project commence on the first day of the month following the First Close of Escrow within the Project. However, the closing of escrow for any Condominium which is leased by a Buyer back to Declarant for use as a model for sales purposes shall not be deemed a First Close of Escrow for purposes of commencing Assessments.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

6.03 Equal Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Condominiums, except as otherwise provided.
- (b) Each subject Condominium is liable for a pro rata share (the fractional number one (1) over the total number of Condominiums subject to Assessment by the Association at that time).

6.04 **Assessment Duties of the Board of Directors.**

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Sections 5600, 5605, 5610, 5615, 5620 and 5625.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Unit, said Owner shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Unit and shall automatically transfer to a new Owner in the event of sale.
- (c) The Board may not impose Special Assessments in a fiscal year aggregating more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless approved by a majority of the votes cast at a meeting in which the need for a Special Assessment is determined. Special Assessments levied by the Board in order to restore funds to the reserve account are included in this limitation.

6.05 **Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.**

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
 - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 5650(b) (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
 - (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
 - (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;

- (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
 - (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey; or
 - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) exclusive of late charges, interest and fees and costs of collection, or unless the assessments have been delinquent for longer than twelve (12) months.
 - (f) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.
 - (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

6.06 **Collection of Assessment Debts Not Collectible Through Foreclosure.**

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars (\$1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 5720 or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of Delinquent assessments exceeds one thousand eight hundred dollars (\$1,800) or the delinquency is for longer than twelve (12) months); or
- (c) Any other manner provided by law except judicial or non-judicial foreclosure.

6.07 **Reserves.**

Fees, dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those Improvements that the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

6.08 **Right of Redemption.**

A nonjudicial foreclosure by the Association shall be subject to a right of redemption from a foreclosure sale within ninety (90) days after the foreclosure sale.

6.09 **Nonuse and Abandonment.**

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area or abandonment of a Unit.

6.10 **Emergency Assessments.**

- (a) Notwithstanding any other provision of this Article, the Board may increase assessments in order to fund any of the following:
 - (1) An extraordinary expense required by an order of the court;
 - (2) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible if a threat to personal safety on the property is discovered;
 - (3) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget.
- (b) Prior to imposition or collection of an assessment for emergency purposes, the Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of assessment.

6.11 **Waiver of Exemptions.**

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

ARTICLE VII

ARCHITECTURAL CONTROL

Article VII addresses alterations which owners may wish to make to their units. The Board's unanimous approval must be obtained for most such changes.

7.01 Approval by the Board.

- (a) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (including any Common Area) must first be approved in writing by the Board.
- (b) Complete plans and specifications must be submitted in writing to the Board showing plot layout, materials, sizes, color, design and landscaping, and with the signature of the Owner.

7.02 Certain Procedures for the Board.

- (a) If the Board fails to rule on a proposal within thirty (30) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved.
- (b) Complete plans and specifications must be either:
 - (1) Personally delivered to a Board Member; or
 - (2) Mailed postage prepaid, certified mail, return receipt requested to the Board at its current address.

7.03 Enforcement by Owners.

If the Association fails to take corrective action within a reasonable period of time after knowledge of a violation, an Owner may take legal action to enforce these provisions.

7.04 No Waiver.

Board approval of a proposal does not limit the Board's right to withhold approval for similar proposals.

7.05 No Liability.

The Association and Board (including officers, directors, employees, agents and Members) are not liable in any way for loss, damage or injury connected with the Board's duties, unless there is evidence of willful misconduct or bad faith (in which case only the guilty person(s) are liable).

7.06 **Review Standards.**

- (a) The Board must approve or reject plans and specifications submitted for proposed construction or alteration based on:
 - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials, and harmony with existing structures; and
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved.
- (b) The Board is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.
- (c) Board approval of solar heating units may not be withheld unreasonably.

7.07 **Rules and Regulations.**

The Board may adopt, amend and repeal reasonable Rules and Regulations to implement the provisions hereof.

7.08 **Compensation of Members.**

Board Members may not receive compensation for services rendered unless unanimously approved by the Owners (other than reimbursement for reasonable expenses incurred in carrying on the business of the Association).

ARTICLE VIII

MORTGAGEE PROTECTION

Article VIII provides certain protections to holders of the first mortgage on any unit, in order to make it easier for owners to obtain purchase money loans or refinancing.

8.01 Subordination of Lien and Foreclosure.

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
 - (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
 - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
 - (3) The provisions of this paragraph (a) do not preclude other mortgage protections provided by California law.
- (b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration, shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
 - (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale, except that in the event the net sale proceeds exceed what is owed on all encumbrances prior to the Assessment lien, the Association shall be entitled to receive payment on any Assessment lien; and
 - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Condominium is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

8.02 Mortgagees Are Not Required to Cure Certain Breaches.

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

8.03 **Effect of Breach of Declaration.**

- (a) Breach of this Declaration may not:
 - (1) Cause any forfeiture or reversion of title; or
 - (2) Create any right of reentry.
- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Owner, and damages may also be awarded provided that:
 - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
 - (2) This Declaration binds any Owner whose title is derived through Foreclosure, trustee's sale or otherwise.

8.04 **Exemption From Right of First Refusal.**

- (a) Any right of first refusal or option to purchase a Condominium that may be granted to the Association or other party may not impair the rights of a First Mortgagee to do any of the following:
 - (1) Foreclose or take title to a Condominium, pursuant to the remedies provided in the Mortgage;
 - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
 - (3) Sell or lease a Condominium acquired by the Mortgagee.
- (b) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Condominium, unless the Mortgagee, if any, grants written consent for the restriction.

8.05 **Restrictions on Certain Changes.**

- (a) Except as provided by statute in case of condemnation or substantial loss to the Property, the unanimous vote of Owners and of Eligible First Mortgagees (based on one vote per Unit for each Eligible First Mortgage held) must give written approval before the Association may do any of the following:
 - (1) Alter the method of determining Assessments or other charges levied against an Owner.
 - (2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area.

- (3) Fail to maintain Fire and Extended Coverage on insurable Common Area as specified in this Declaration.
- (4) Amend the Governing Documents concerning any material provision, including but not limited to the following:
 - (A) Voting rights;
 - (B) Reductions in reserves for maintenance, repair, or replacement of the Common Area improvements;
 - (C) Responsibility for maintenance and repairs;
 - (D) Reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;
 - (E) Redefinition of any Unit boundary;
 - (F) Convertibility of Units into Common Area or Common Area into Units;
 - (G) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
 - (H) Hazard or fidelity insurance requirements;
 - (I) Imposition of any restrictions on the leasing of Units except as provided herein;
 - (J) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
 - (K) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
 - (L) Any provisions that expressly benefit mortgagees, insurers, or guarantors; or
 - (M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (b) Except as provided by statute in case of condemnation or substantial loss to the Property, the unanimous vote of the First Mortgagees (based on one vote per Unit for each Eligible First Mortgage held), in addition to the vote required from both Owners, must give written approval before the Association may, by act or omission, do any of the following:
 - (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Unit or Common Area (other than granting easements as specified in this Declaration);
 - (2) Partition or subdivide any Unit;
 - (3) Seek to abandon or terminate the legal status of the Property;

- (4) Use hazard insurance proceeds for losses to the Property (Unit or Common Area) for other than repair, replacement or reconstruction of the Property;
 - (5) Change the pro rata interest or obligation of any Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Owner in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
 - (6) Change or alter the priority of any liens created by or claimed under this Declaration;
 - (7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;
 - (8) Modify or amend any provisions of this Declaration regarding insurance;
 - (9) Modify or amend any provisions of this Declaration which is a requirement of the GNMA, FHLMC or FNMA.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within sixty (60) days after the Eligible First Mortgagee receives notice of the proposed action, provided notice was delivered personally or by certified or registered mail, return receipt requested.
- (d) Any addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

8.06 **Inspection of Association Books and Records.**

Any First Mortgagee has the right to examine the books and records of the Association during business hours and after notice to the Association. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

8.07 **Condemnation Awards and Insurance Proceeds.**

Condemnation awards or insurance proceeds for losses to or taking of Units or Common Areas shall be distributed to the Owner(s) in proportion to the fair market value of their Unit, provided that if at the time of distribution there is a Mortgage on any individual Unit, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Unit is mortgaged. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

8.08 **Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Condominiums.

8.09 **Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote except as provided in Section 8.05.

8.10 **Payments by Mortgagees.**

(a) First Mortgagees may pay the following jointly or severally:

- (1) Taxes or other charges in default which may be a charge against any part of the Common Area; and
- (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area.

(b) Upon such payments, the Association:

- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
- (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

8.11 **Notices to Mortgagees.**

(a) Each Eligible First Mortgagee is entitled to timely written notice of:

- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its Mortgage;
- (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage or any other breach or default under the Governing Documents by the Owner of any Unit on which it holds the mortgage;
- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.

(b) To obtain the information above, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the Condominium number or address of the Condominium for which it has the Mortgage.

8.12 **Loan to Facilitate Resale.**

Any First Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by Foreclosure, or by a deed in lieu of Foreclosure or by an assignment in lieu in Foreclosure, shall be deemed to be a loan made for value in good faith and entitled to all of the rights and protections of First Mortgages under this Declaration.

8.13 **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 or the Governing Documents, whether now or as hereafter amended, the provisions of this Article shall control.

ARTICLE IX
DAMAGE AND DESTRUCTION TO IMPROVEMENTS

Article IX concerns restoration or other disposition in the case of damage or destruction of common areas.

9.01 **Restoration of the Property.**

In case of casualty damage to Common Area Improvements, the Association will repair and substantially restore the Common Area Improvements to the same manner as existed before:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenant for Assessments").
- (b) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners, unless a majority of the Owners (other than Declarant) determine either:
 - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
 - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).
- (c) If the estimated cost of repair does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

9.02 **Notice to Owners and Listed Mortgagees.**

Immediately upon learning of any material damage or destruction to the Common Area or any Unit, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

44

9.03 **Sale of Property and Right to Partition.**

If the Association elects not to rebuild, an appraiser licensed by the State of California Office of Real Estate Appraisers shall determine the relative fair market values of all condominiums as of a date immediately 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 values.

9.04 **Damage to Dwellings.**

- (a) The repair or reconstruction of any damaged Units shall commence as soon as reasonably practicable after the occurrence of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs
- (b) If an Owner is required to make any repair, or if an Owner desires to rebuild any Improvement or install any fixture or equipment, which will affect or involve any interior bearing wall or other portion of the Common Area, the prior written approval of the Board must be obtained.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction and to screen any unsightly views resulting from the damage or destruction.

45

ARTICLE X

CONDEMNATION

Article X concerns condemnation of common areas by a governmental entity.

10.01 Representation by the Board in Condemnation Proceedings.

- (a) If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its delegation) will:
 - (1) Represent Owners in the proceedings;
 - (2) Immediately give notice of the condemnation threat to all Beneficiaries, insurers and guarantors of First Mortgages who have filed written requests for notices; and
 - (3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
- (b) Any award(s) received shall be paid to the Association.
- (c) If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and Improvements apply as if in the case of destruction.
- (d) If any of the net condemnation award is not used to restore the remaining Common Area, the Association will handle the award in accordance with the Article entitled, "*Damage and Destruction to Improvements*".

10.02 Distribution of Award.

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be distributed to the Owner(s) in proportion to the fair market value of their Condominium, provided that if at the time of distribution there is a Mortgage on any individual Condominium, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Condominium is mortgaged.
- (c) If a condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.

46

- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an appraiser licensed by the State of California Office of Real Estate Appraisers and hired by the Board with approval of fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve the Board's selection of appraiser, then any Mortgagee may hire a licensed appraiser at its own cost, and the award amount will be calculated based upon the average of all appraisals obtained.

- (e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser, and in the event of disagreement between the appraisers the Board shall resolve the dispute.

47

ARTICLE XI

COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST

Article XI governs partition of the property.

11.01 **No Partition; Exceptions.**

- (a) An Owner may not bring an action for partition of the Common Area by sale except as provided in California Civil Code Section 4610 (or any similar statute in effect at the time).
- (b) These provisions do not prevent a judicial partition between co-tenants of a Condominium.

11.02 **No Separate Conveyance of Condominium Components.**

- (a) An Owner may not sever, sell, convey or encumber a Condominium's component interests, such as the undivided interest in the Common Area from the Unit.
- (b) The provisions of the Section terminate when a partition is decreed, either judicial or in accordance with this Article.

ARTICLE XII

EASEMENTS

Article XII addresses easements within the property.

12.01 Creation of Easements.

- (a) Easements referred to herein are established upon the First Close of Escrow in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Condominiums and Property superior to all other encumbrances.
- (b) Individual grant deeds to Condominiums shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

12.02 Reservation of Easements for Declarant's Construction and Marketing Activities.

- (a) For as long as five (5) years from the date of the First Close of Escrow in the Project (and without unreasonably interfering with other Owners), the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:
 - (1) Improvements. Easements over i) the Common Area for the purpose of constructing, erecting, completing, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways, as long as any Unit remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, provided that access for such purpose is not otherwise reasonably available;
 - (2) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area, other than Exclusive Use Common Area if any, in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Units within the Property;
 - (3) Utilities. Easements, whether or not shown on the Tract Map/Condominium Plan, over the Property for the installation and maintenance of electric, telephone, cable television, community antenna television system, water, gas, sanitary sewer lines and drainage facilities. Declarant further reserves the right to grant and transfer easements over the Units and Common Area for installation, maintenance and repair of the Service Lines and Facilities.
- (b) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property, and any repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

12.03 **Certain Easements for Association.**

- (a) The Association has, and may grant, nonexclusive easements and rights of way for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration, and further has utility and drainage easements as hereinafter provided to maintain the health, safety, convenience and enjoyment of the Units and Common Area.
- (b) Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire upon the close of escrow for the sale of both Units in the Project by Declarant.

12.04 **Certain Easements for Owners.**

- (a) Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area (except Exclusive Use Common Areas) to all Owners, subject to other provisions of the Governing Documents.
- (b) Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, and other service lines and facilities ("Service Lines and Facilities") are as follows:

Easements for Service Lines and Facilities in Units or Common Area is granted in favor of the Owner of a Unit or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;

If Service Lines and Facilities serve more than one Unit, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unsolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

- (c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Board, each Owner acknowledges that such Improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.
- (d) Declarant hereby reserves, for its benefit and the benefit of the Association and each Owner, nonexclusive easements on, over, across and through all Units for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Unit shall be appurtenant to, binding upon, and shall pass with the title to, every Unit conveyed.

12.05 **Drainage Easements.**

- (a) The Association and each Owner accept the drainage facilities and pattern for the Units and Common Area established by the final grading of the Property originally undertaken by Declarant (including "cross-unit" drainage from adjacent Units and Common Areas).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Board.
- (c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.
- (d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Units, the Owners of said Units shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

12.06 **Encroachment.**

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Unit or Common Area, originally constructed by Declarant, or as reconstructed in substantial conformance with the Condominium Plan, with improvements encroaching on, over and across any portion of a contiguous Unit or Common Area, as shown in the Condominium Plan, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.
- (b) If a portion of a Unit encroaches on, over and across any portion of a contiguous Unit or Common Area, the encroaching Unit Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Unit, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design.
- (f) In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of Unit(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.

31

- (g) Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of same over the Common Area are specifically reserved for the benefit of the Owners. The foregoing easements shall not unreasonably interfere with an Owner's use and enjoyment of such Owner's Unit.

- (h) The easements for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

52

ARTICLE XIII
AMENDMENT

Article XIII concerns amendments to the Declaration.

13.01 **Amendment.**

- (a) So long as Declarant owns all or any portion of the Property, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration without the approval of Owners or the Association (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office, except as otherwise specially provided in this Declaration.

- (b) After the sale of both Condominiums in the Property, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
 - (1) A unanimous vote of both Owners is needed to amend this Declaration.

 - (2) Any amendment must be properly recorded in the County Recorder's Office.

- (c) No amendments to any provisions in this Declaration including, but not limited to, the Article entitled "*Enforcement and Dispute Resolution*" or other Governing Documents which specifically benefit the Declarant as developer, shall be made without the written consent of the Declarant.

ARTICLE XIV
ENFORCEMENT AND DISPUTE RESOLUTION

Article XIV provides methods for enforcement and for resolving any claims and Disputes between Owners, the Association, and/or Declarant.

14.01 Enforcement of Governing Documents.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents

14.02 Enforcement Between Association and Owner.

Any dispute between the Association and an Owner involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents, shall, as may be required, be submitted to the procedures set forth in California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.*

This Section shall not be applicable to (a) those governed Disputes between the Association and Owner relating to the imposition or collection of Assessments, or (b) those subject to the Right to Repair Law, or California Civil Code Section 6000, *et seq.* (the "Calderon Act").

14.03 Failure Not a Waiver.

The failure of any Owner, the Board, the Association or its officers or agents to enforce any of the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter. No such failure shall result in or impose any liability upon the Board, or any of its officers or agents. Waiver or attempted waiver of any provision of this Declaration or the Association's other Governing Documents with respect to any Condominium shall not be deemed a waiver thereof as to any other Condominium, nor shall the violation of any provision hereof or thereof in respect to any Condominium affect the applicability or enforceability of any provision of this Declaration in respect of any other Condominium. A waiver of any enforcement right shall be only pursuant to an instrument in writing signed by the party to be charged with such waiver and shall be limited to the particular covenants, condition or restriction contained herein which is expressly set forth as being waived in such writing.

14.04 Discipline for Breach.

After notice and a hearing a provided in herein, the Board may do the following:

- (a) Suspend Rights. Suspend an Owner's voting rights and/or the right to use the Common Area (other than the right of ingress and egress to the Owner's Unit): (i) for the period during which any Assessment, including any monetary penalty against such Owner's Unit, remains unpaid and delinquent, and (ii) for a period not to exceed thirty (30) days, or for as long as the violation continues for any other infraction of this Declaration, the Bylaws or the published Rules and Regulations of the Association committed by any Owner, or such Owner's guests, servants, family members, tenants or invitees.

- (b) Impose Monetary Penalties. Impose a monetary penalty on any Owner in such amounts as determined by the Board and as more fully described in a schedule of monetary penalties set forth in the Rules and Regulations adopted and amended by the Board, for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants or invitees. The Board shall distribute to the Members, by personal delivery or first class mail, a copy of the schedule of monetary penalties adopted by the Board. Subject to other provisions herein, the Association and the Board shall have the same rights and remedies, including lien, foreclosure, late charge and interest rights, or seeking judicial enforcement for the enforcement and collection of monetary penalties as they have for the enforcement and collection of Assessments and any monetary penalty provided for herein shall be deemed to be a Special Assessment. Any infraction or violation of an ongoing nature shall subject the violating Owner to a continuing monetary penalty which may be assessed on a daily basis until the infraction or violation in question has been remedied.
- (c) Judicial Relief. Seek judicial relief for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants or invitees.. In a situation where injury to persons or property is immediately threatened, the Board may seek judicial relief without first complying with the notice and hearing provisions of herein.
- (d) Limitation on Enforcement Remedies. Except for the remedies provided in this Section, or as a result of a judgment or decree of a court or a decision arising out of arbitration or mediation or a foreclosure or sale under a power of sale based on the failure of an Owner to pay assessments duly levied by the Association as provided hereinafter, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium if the Owner does not comply with provisions of the Governing Documents.

14.05 Notice and Hearing.

- (a) General Provisions. The Board shall have the right to establish the Rules and Regulations for providing an Owner a hearing for an alleged violation of this Declaration, the Bylaws or the Association's Rules and Regulations where such Owner may have such Owner's voting rights or common area privileges suspended and/or have a monetary penalty imposed. Such Rules or Regulations established and maintained by the Board shall be fair and reasonable, as required pursuant to California Corporations Code Section 7341, and shall comply with Civil Code Section 5855.
- (b) Procedures. Notice and a hearing regarding monetary penalties, suspension of privileges, and any other disciplinary measures taken under this Declaration or the Association's other Governing Documents shall be accomplished as follows:
 - (i) Right to be Heard. The Owner being penalized shall be given an opportunity to be heard, either orally or in writing, at an executive session Board meeting;
 - (ii) Notice. Notice of the hearing shall be given either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records at least ten (10) days prior to the hearing. The notice shall contain, at a minimum, the date, time and place of the hearing, the nature of the alleged violation, the proposed monetary penalty or sanction, and a statement that the Owner has the right to attend the hearing and to address the Board at the hearing;

5

- (iii) Procedure for Hearing. At the hearing, the Owner so charged shall have the right to be heard by the presentation of oral or written evidence and arguments. If the Owner fails or refuses to attend the hearing, the Board may decide the matter in such Owner's absence;
- (iv) Decision of Board. Following the hearing, the Board shall decide whether the Owner shall in fact be penalized or sanctioned or assessed for damages, as applicable;
- (v) Notice of Decision. Within fifteen (15) days of the hearing, the Board shall notify the Owner of its decision and the reasons therefore, either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records.

14.06 **Remedies Cumulative.**

Each remedy provided for by this Declaration for breach of any of the covenants, conditions, restrictions, reservations, liens or charges contained herein shall be in addition to any other available remedy, whether provided for by law or in equity, and all of such remedies whether provided for by this Declaration or otherwise shall be cumulative and not exclusive. In addition, except for the nonpayment of any Assessments provided for herein, it is hereby expressly stipulated that the remedy at law to recover damages for the breach or violation of this Declaration and/or the Association's other Governing Documents is inadequate and that appropriate relief shall be awarded to enjoin any such breach or violation.

14.07 **Joint and Several Liability.**

In the case of joint ownership of a Condominium, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

14.08 **Special Provisions Applicable to Resolution of Construction Defect Disputes; Declarant's Election to "Opt In" to Statutory Pre-Litigation Procedures.**

- (a) Notice of Procedures for Actions for Construction Defects. The Property is subject to Title 7 of Part 2 of Division 2 of the California Civil Code (commencing with Section 895) (the "Right to Repair Act"). The procedures established by the Right to Repair Act impact the Owners' and Association's legal rights.
- (b) Declarant has elected to engage in the non-adversarial pre-litigation procedures set forth in Chapter 4 of the Right to Repair Act (California Civil Code §§ 910 through 938, inclusive). If such non-adversarial pre-litigation procedures fail to resolve a Dispute governed by the Right to Repair Act, such Dispute shall be resolved in accordance with the binding general judicial reference procedures set forth herein.

56 SA

14.09 **Resolution of Construction Defect Disputes Against Declarant.**

- (a) 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 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. 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.
- (b) If a Dispute between the Association and Declarant is not resolved despite the proceedings set forth in Civil Code Section 6000, further litigation shall comply with all of the requirements of Section 6150 of the Civil Code.
- (c) Upon resolution of a Dispute subject to Civil Code Section 6000, the Association shall disclose to its Members all of the matters specified in Section 6100 of the Civil Code.

14.10 **Submission of All Disputes Involving Declarant, Including Construction Defect Disputes, to Judicial Reference.**

If any party commences a lawsuit for a dispute involving the Declarant, all of the issues in such action, whether of fact or law, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a), 639(a) and (d), and 641 through 645.1, or any successor statutes thereto. Any party to such lawsuit may commence a judicial reference pursuant to Code of Civil Procedure Section 638.

Any dispute or claim regarding actionable defects as defined in Civil Code Section 896, meaning 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, of a seller, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, for original construction intended to be sold as an individual dwelling unit shall be decided by Judicial Reference in accordance with this Section after the pre-litigation procedures are concluded and such procedures fail to resolve the Dispute. This Judicial Reference provision shall be binding on and enforceable by every Owner, the Association, and Declarant Parties.

NO RIGHT TO JURY OR JUDGE TRIAL.

EACH OF THE PARTIES TO ANY DISPUTE, CLAIM OR DISAGREEMENT RELATING TO CONSTRUCTION DEFECTS HAS WAIVED OR SHALL WAIVE HIS/HER/ITS RIGHT TO TRIAL BY JURY OR BY A JUDGE SITTING WITHOUT A JURY AND SHALL RESOLVE THE DISPUTE THROUGH THE JUDICIAL REFERENCE PROCEDURES SET FORTH HEREIN.

- (a) **Inclusion of Necessary Parties.** The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. In the event that the participation in the judicial reference proceeding of a necessary and appropriate party cannot be obtained despite the good faith efforts of all Parties and a Party refuses to participate in the judicial reference proceeding on the ground of such lack of participation, then the dispute shall be tried in a court of competent jurisdiction.

57

- (b) Allocation of Costs and Fees. Declarant shall advance the fees necessary to initiate the dispute resolution process. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise.
- (c) Authority and Qualifications of Referee. The general 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 referee shall be the only trier of fact or law in the reference proceedings and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.
- (d) Qualifications of Referee. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters. The referee shall not have any relationship to the parties or interest in the Project.
- (e) Authority of Referee. 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 Judicial Arbitration and Mediation Services ("JAMS") 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) The proceedings shall be heard in the County where the Project is located;
 - (2) The referee must be a neutral and disinterested party who is a retired judge or with at least ten (10) years' experience in relevant real estate matters;
 - (3) Any Dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
 - (4) The referee may require one or more pre-hearing conferences;
 - (5) 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;
 - (6) 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;
 - (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;
 - (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;
 - (9) 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, except the referee shall have no authority to award any party punitive damages against the Declarant; and

- (10) 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.
- (f) Timeliness of Reference Proceedings. The participants in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. The referee shall promptly commence the judicial reference proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (g) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in subparagraph (b) above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (h) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee, as provided herein, any provisional remedies are sought by the parties to the dispute, such relief may be sought in the Superior Court of the County in which the Project is located. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (i) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the dispute had been tried by the court.
- (j) Judgment and Appeal. The statement of decision of the referee upon all of the issues considered by the referee is 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. Upon entry of judgment, the decision of the referee shall be appealable as if rendered by the court.
- (k) Standing. Declarant and Declarant Parties shall have the right to enforce the provisions of this Article regardless of whether Declarant or Declarant Parties hold any right, title or interest in and to the Property or any portion thereof.
- (l) Severability. In the event that any phrase, clause, sentence, section, article or other portion of this Article shall become illegal, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, void or against public policy, the remaining portions of this Article shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

59

ARTICLE XV
MISCELLANEOUS PROVISIONS

Article XV covers miscellaneous issues not addressed elsewhere in the Declaration.

15.01 **Term of Declaration.**

This Declaration shall continue in full force and effect until a declaration of termination is recorded, satisfying the requirements of an amendment to this Declaration.

15.02 **Notices.**

Any approval, disapproval, demand, document or other notice which Declarant, the Association, or any Owner may desire to give to another party must be in writing and may be given either by i) personal delivery; ii) by United States mail which shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the mail, first class or registered, postage prepaid, addressed to the person to be notified; or iii) by any other method provided by Civil Code Sections 4040, 4045 and 4050.

15.03 **Partial Invalidity.**

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

15.04 **Number.**

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

15.05 **Attorneys' Fees.**

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees incurred after the filing of a lawsuit.

15.06 **Disclosures.**

- (a) Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Units, heating, ventilation air conditioning systems, plumbing, Common Area, garages, etc.
- (b) The Project was not originally built as condominiums, but was built in 2009 as an apartment building and has been occupied for that purpose.

(c) Pursuant to Section 20.32.690 of the Long Beach Municipal Code, the following are the building improvements required and completed for the Project:

- (1) New smoke detectors in each bedroom and hallway;
- (2) New GFI receptacles in kitchens and bathrooms;
- (3) New roofs;
- (4) Replacement of termite damaged wood;
- (5) Replacement of water heaters and re-strapping as needed;
- (6) Repair of stairs and railings as needed;
- (7) Patching and painting of buildings;
- (8) Installation of adequate site lighting;
- (9) Upgrade of landscaping and irrigation system;
- (10) Addition of trash enclosure;
- (11) Installation of new carpet, paint, appliances, fixtures, countertops, cabinet doors, wardrobe doors and toilet accessories;

15.07 **Declarant's Rights After Sale of All Units in the Project.**

For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights:

- (a) Access to and the right to inspect the Association books and financial records;
- (b) Access to and the right to inspect the Association's maintenance records;
- (c) Right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records; and
- (d) Right to inspect all Common Areas of the Property upon three (3) days' notice to the Association and, within its sole discretion, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Units by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain owner consent for inspection of Units, may be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance. The purpose of this right of inspection is to allow Declarant to repair defects at an early stage before substantial damage has occurred. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

6

15.08 **Supremacy of Legislation.**

The provisions of this Declaration are automatically supplemented and superseded by any state or federal enactment, and judicial interpretations of laws, affecting common interest developments. Any reference to a specific Code section in this Declaration is also a reference to future amendments thereof and to any successor statutes. The terms of this Declaration shall be deemed automatically amended to conform to such future changes in Code sections without necessity for recording any such amendment.

15.09 **No Enhanced Protection Agreement.**

In no event shall any of the provisions contained within the Governing Documents, other documentation, representations or warranties provided by Declarant or its agent to Owner be construed, interpreted or understood to be an "enhanced protection agreement" ("EPA") under California Civil Code Section 901 unless Declarant otherwise expressly states that such document, representation, or warranty constitutes an EPA under said section of the Civil Code.

15.10 **Changing the Project Marketing Name.**

The Project shall be marketed under the name **Temple Ave Homes**. Declarant may at Declarant's sole discretion, change the marketing name of the Project.

15.11 **Conflict Between Declaration and Condominium Plan.**

In the event of any conflict between this Declaration and the Condominium Plan, this Declaration shall be controlling. Any defined term used in the Condominium Plan and not expressly defined therein shall have the meaning prescribed for such term in this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Temple Ave Homes, Parcel Map No. 72651.

"Declarant"

X Padma Makineni
PADMA MAKINENI, spouse of Rao Makineni

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

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On February 23, 2017, before me, Mark Trevor Conrad, Notary Public, personally appeared:

Padma Makineni

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.

(SEAL)



Mark Trevor Conrad

Notary Public

63

EXHIBIT "A"

PROPERTY

Parcel 1 of Parcel Map No. 72651, in the City of Long Beach, County of Los Angeles, State of California, as per Parcel Map recorded in Book 390, Pages 44 through 46, inclusive, of Parcel Maps, in the Office of the County Recorder of Los Angeles County.

CH

EXHIBIT "B"

MAINTENANCE RESPONSIBILITIES

(The Association is Responsible for the Maintenance, Repair and Replacement of the Common Area, Including But Not Limited to Those Items Listed in this Exhibit "B")

Items	Association Responsibility	Owner Responsibility
Air conditioning equipment serving a single unit		Maintain and repair
Balcony surfaces, including waterproofing	Maintain, repair and replace	Keep balcony clean and free of debris and trash
Balcony railings	Maintain, repair and replace	
Ceiling surfaces (including any paint, wallpaper and acoustical coatings)		Maintain, repair and replace
Fireplaces		Maintain, repair and replace
Front door		Maintain, repair and replace*
Exterior Surfaces	Paint, stain or waterproof surface	
Front door – interior surface		Maintain, repair and replace
Front door – interior casing		Maintain, repair and replace
All exterior door hardware		Maintain, repair and replace*
All door weather stripping		Maintain, repair and replace
Doorbell exterior panels, buttons and circuits		Maintain, repair and replace*
Doorbell chimes inside the unit		Maintain, repair and replace
Garage door – exterior surface	Maintain, repair and replace	
Garage door – interior surface		Maintain, repair and replace*
Garage door opening Mechanism and related hardware		Maintain, repair and replace*
Patio/balcony/yard area doors and door frames (doors leading from unit to exterior)		Maintain, repair and replace
Patio/balcony/yard area door – exterior surface (doors leading from unit to exterior)		Maintain, repair and replace
Patio/balcony/yard area door – interior surface (doors leading from unit to exterior)		Maintain, repair and replace
Patio/balcony/yard area door casing (doors leading from unit to exterior)		Maintain, repair and replace
Dryer duct work		Maintain, repair and replace
Front door light fixture		Maintain fixture controlled by switches in unit or separately metered to unit
Front door light bulb		Replace as necessary for fixtures maintained by owner

65

Items	Association Responsibility	Owner Responsibility
Patio/balcony/yard area light fixture		Maintain, repair and replace*
Patio/balcony/yard area light bulb		Maintain and replace
Exterior stucco	Maintain, repair and replace	
Exterior vents for plumbing and appliances (excluding washer/dryer duct work)		Maintain, repair and replace
Floor surfaces in unit interior		Maintain, repair and replace
Sub-flooring		Maintain, repair and replace
Gas pipes from exterior shutoff valve throughout unit		Maintain, repair and replace
Heating equipment (including lines, wires, vents, pipes, duct work, platforms and any other related equipment) located inside walls and/or running from the roof down to a unit)		Maintain, repair and replace
Interior wood trim, cabinets and shelves		Maintain, repair and replace
Landscaping – patios and balconies (including but not limited to, maintaining, trimming and replacing in a neat and attractive condition and in a manner which does not endanger the Common Area by roots, branches, over-watering or otherwise)		Maintain, repair and replace*
Patio fences	Maintain, repair and replace	
Patio floor surfaces		Maintain and repair. Keep patio floor clean and free of debris and trash
Plumbing fixtures inside a unit (including, but not limited to, fixtures, toilets, faucets, bathtubs, tub and shower valves, shower pans, drain lines, and angle stops which exclusively service a unit)		Maintain, repair and replace. An owner may plunge blocked kitchen and bathroom facilities in his unit but may not use a snake or cause a snake to be used, in any pipes unless instructed to do so by the Association
Roofs	Maintain, repair and replace	
Security equipment – any locks, intercom equipment and security systems installed by an owner in a unit		Maintain, repair and replace
Telephones (including, but not limited to, lines, jacks and wiring) inside a unit		Maintain, repair and replace
Interior wall surfaces (including any paint, wallpaper, drywall and other finishes)		Maintain, repair and replace

06

Items	Association Responsibility	Owner Responsibility
Pipes and drains in walls inside units serving individual units		Maintain portions which are submetered to the unit. An owner may plunge blocked kitchen and bathroom facilities in his unit but may not use a snake or cause a snake to be used, in any pipes unless instructed to do so by the Association
Electrical wires in walls inside units serving individual units		Maintain, repair and replace
Unit's circuit breaker panel		Maintain, repair and replace
Switches and outlets inside the unit		Maintain, repair and replace
Cable TV wiring in walls inside units serving individual units		Maintain, repair and replace
Water heaters		Maintain, repair and replace*
Glass, frames, hardware and rollers		Maintain, repair and replace*
Window casing		Maintain, repair and replace*
Locks and latches		Maintain, repair and replace
Screens and frames		Maintain, repair and replace*
Interior caulking		Maintain, repair and replace
Mailbox – cluster	Maintain, repair and replace	Owner is responsible for replacement of key and lock, in the event of lost key

* All owner maintenance, repair and replacements must conform with the Architectural Guidelines