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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS

Dolphin Bay
HOTEL & RESIDENCES

NOTE: AS MORE FULLY DESCRIBED IN <u>SECTION 21.19</u> OF THIS DECLARATION, IN THE EVENT OF ANY DISPUTES ARISING HEREUNDER, OR RELATING TO THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT GOVERNED HEREBY, SUCH DISPUTE SHALL BE SUBMITTED TO JUDICIAL REFERENCE, A FORM OF ALTERNATIVE DISPUTE RESOLUTION.

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS

TABLE OF CONTENTS

Page

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (DOLPHIN BAY HOTEL & RESIDENCES)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS (DOLPHIN BAY HOTEL & RESIDENCES) (this "**Declaration**") is made this _____ day of November, 2005, by HERON CREST DEVELOPMENT, a California general partnership ("**Declarant**").

P R E A M B L E:

A. Declarant is the owner of certain real property (the "**Property**") located in the City of Pismo Beach, County of San Luis Obispo, State of California, more particularly described as follows:

> Lot 1 of Tract No. 1857 in the City of Pismo Beach, County of San Luis Obispo, State of California, according to map recorded February 24, 1992 in Book 16 at page 65 of Maps, in the Office of the County Recorder of said County ("**Tract No. 1857**").

All initially capitalized but undefined terms in this Preamble are defined in Article I of this Declaration.

B. On September 25, 1992, Declarant previously recorded on the Property those certain Declaration of Covenants, Conditions, and Restrictions of Dolphin Bay Condominiums as Document Number 1992-065296 in the Official Records San Luis Obispo County (the "**Original CC&Rs**"). Declarant hereby desires to amend and restate the Original CC&Rs by recording this Declaration on the Property.

C. The "Project" which is the subject of this Declaration is a "mixed use" development which includes residential and commercial elements. The Project contains three (3) four-story buildings (each a "**Building**" and collectively, the "**Buildings**"), and is comprised of 70 "Residential Units," two (2) "Commercial Units," subterranean parking, a pool, elevators and hallways. The Commercial Units include a "Hotel Unit" and a "Restaurant Unit."

D. The Restaurant Unit contains restaurant space and restrooms. It is currently contemplated that the Restaurant Unit will be used for purposes of serving food, operating as a cocktail lounge, and hosting festive events such as weddings. The Restaurant Unit will be used by "Owners" of Residential Units, their guests, "Hotel Guests" and members of the general public. The Hotel Unit contains a lobby, office space, housekeeping rooms, and certain "Exclusive Use Common Area" such as the "Porte Cochere." It is currently contemplated that Owners of the Residential Units will have the opportunity (but not the obligation) to participate in a hotel leasing program (the "**Hotel Leasing Program**") to be operated by the "Hotel Operator" as described in more detail in Article XV herein. Nothing herein shall be interpreted as providing any Owner any assurance of profit to be made in connection with the ownership of any Residential Unit or Commercial Unit. The Hotel Unit will be used by the Hotel Operator in connection with the services to be provided for those guests ("**Hotel Guests**") who rent Residential Units from the Hotel Leasing Program.

E. Operation of the Hotel Leasing Program and the Restaurant Unit make the Project unique from typical residential developments. Since the Project will be frequented by Hotel Guests, restaurant visitors, and others who attend events within the Project, the Project will have a transient environment not typically associated with a strictly residential project. As such, any potential purchaser of a Unit within the Project should carefully consider the potential pros and cons of such a purchase. See Articles XV and XX herein for more information regarding the potential impacts in connection with the Hotel Unit and the Restaurant Unit.

F. Because the Project is a mixed-use project which contains Residential Condominiums as well as Commercial Condominiums, the Project is a "common interest development" as defined in Section 1351(c) of the California Civil Code with characteristics of a "condominium project," as defined in Section 1351(f) of the California Civil Code and a "planned development" as defined in Section 1351(k) of the California Civil Code. Accordingly, the Declarant desires and intends to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums in the Project pursuant to and in accordance with the Davis-Stirling Common Interest Development Act (California Civil Code Sections 1350 *et seq.*).

G. Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all "Persons" having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

ARTICLE I.
DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the following specified meanings.

1.1 "**Allowable Cost**" shall have the meaning set forth in Section 14.6.1 hereof.

1.2 "**Architectural Committee**" **or** "**Committee**" shall mean the Architectural Committee created pursuant to Article VI hereof.

1.3 "**Architectural Rules**" shall have the meaning set forth in Section 6.4.3 hereof.

1.4 "**<u>Articles</u>**" shall mean the Articles of Incorporation of the Association filed or to be filed in the Office of the Secretary of State of the State of California, as said Articles may be amended from time to time.

1.5 "**<u>Assessments</u>**" shall have the following meanings:

1.5.1 "**<u>Regular Assessment</u>**" shall mean a charge against a particular Owner and such Owner's Condominium, representing the Sub Metered Expenses plus the portion of the Common Expenses which are to be levied by the Board among the Owners and their Condominiums in the Project, in the manner and proportions provided herein. Regular Assessments are further classified in <u>Section 7.5.1</u> herein as "**<u>General Regular Assessments</u>**" or "**<u>Residential Regular Assessments</u>**."

1.5.2 "**<u>Emergency Assessment</u>**" shall mean any charge designated as an Emergency Assessment in this Declaration, the Articles, Bylaws or the Association Rules. Unless otherwise provided herein, Emergency Assessments shall be allocated against the Owners in the same manner, and in the same proportion, as Regular Assessments. For example, if the Emergency Assessment relates to the Residential Common Area or a Residential Common Expense, the Emergency Assessment shall be assessed against the Residential Owners, not the Commercial Owners.

1.5.3 "**<u>Remedial Assessment</u>**" shall mean any charge and/or fine levied by the Board against an Owner who fails to comply with this Declaration, the Articles, Bylaws or the Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.5.4 "**<u>Capital Improvement Assessment</u>**" shall mean a charge which the Board may from time to time levy against all Owners, the Commercial Owners, or the Residential Owners, respectively, and their Condominiums, representing a portion of the cost to the Association for installation or construction of capital Improvements on the General Common Area, the Exclusive Use Common Area or the Residential Common Area, as applicable. Such charge shall be levied among the applicable Owners (*e.g.*, all Owners, Commercial Owners, or Residential Owners) and their Condominiums in the same proportions as the relative Square Footage of the applicable Condominiums (as such areas are depicted in the Condominium Plan and/or the tract map for Tract No. 1857), expressed as percentages, and computed by dividing the Square Footage of each applicable Condominium by the total interior square foot floor areas of all of the applicable Condominiums. If the Capital Improvement Assessment relates to the Residential Common Area, the Capital Improvement Assessment shall be assessed against the Residential Owners, <u>not</u> the Commercial Owners.

1.5.5 "**<u>Reconstruction Assessment</u>**" shall mean a charge which the Board may from time to time levy against a particular Owner and such Owner's Condominium, representing a portion of the cost to the Association for reconstruction of any Improvements on any portion of the Common Area. Such charge shall be levied among the applicable Owners (*e.g.*, all Owners, Commercial Owners, or Residential Owners) and their Condominiums in the same proportions as the relative Square Footage of the applicable Condominiums (as such areas are depicted in the Condominium Plan and the tract map for Tract No. 1857, expressed as percentages, and computed by dividing the Square Footage of each applicable Condominium by the total interior square foot floor areas of all of the applicable Condominiums. If the Reconstruction Assessment relates to the Residential Common Area, the Reconstruction Assessment shall be assessed against the Residential Owners, not the Commercial Owners.

1.5.6 "**Reimbursement Assessment**" shall mean a charge levied by the Board against a particular Owner and such Owner's Condominium to reimburse the Association for materials or services provided by the Association which benefit individual Condominiums, including reimbursement for the costs incurred in repairing damage to Common Area and facilities, for which the Owner or Owner's guests, tenants, employees, invitees, licensees, or customers were responsible. Reimbursement Assessments shall also be so levied to reimburse the Association for any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or Association Rules.

1.5.7 "**Special Assessment**" shall mean a charge levied by the Board to fund any budgetary shortfall or to restore any funds transferred from the Association's Reserve Fund. Special Assessments shall also be levied by the Board against an Owner and such Owner's Condominium (and allocated in the same manner as Regular Assessments) to reimburse the Association for any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of Section 1366 of the California Civil Code. The foregoing limitation shall be subject to exception for Emergency Assessments. Such charge shall be levied among the Owners, Commercial Owners, or Residential Owners, respectively, and their Condominiums in the same manner, and in the same proportion, as Regular Assessments. For example, if the Special Improvement Assessment relates to the Residential Common Area, the Special Assessment shall be assessed against the Residential Owners, not the Commercial Owners.

1.6 "**Association**" shall mean the Dolphin Bay Property Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.7 "**Association Maintenance Funds**" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VII hereof.

1.8 "**Association Personnel**" shall mean all persons employed by the Association to provide general administrative, maintenance, security and/or other services benefiting the entire Project.

1.9 "**Association Rules**" shall mean the rules and regulations adopted by the Board from time to time pursuant to Section 4.8, below, which govern the Property.

1.10 "**Authorized Vehicles**" shall have the meaning set forth in Section 10.3.1 hereof.

1.11 "**Balcony Areas**" shall mean the balconies located on the second, third and fourth floors of the Buildings identified on the Condominium Plan as B-214 through B-219 (inclusive), B-311 through B-317 (inclusive), B-411 through B-415 (inclusive), B-221 through B-227 (inclusive), B-321 through B-327 (inclusive), B-421 through B-425 (inclusive), B-231 through B-237 (inclusive), B-331 through B-337 (inclusive), and B-431 through B-435 (inclusive). The Balcony Areas shall be a part of the Exclusive Use Common Area.

1.12 "**Beneficiary**" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee or Beneficiary.

1.13 "**Board**" **or** "**Board of Directors**" shall mean the Board of Directors of the Association.

1.14 "**Bond**" shall have the meaning set forth in Section 20.1 hereof.

1.15 "**Budget**" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration.

1.16 "**Building**" and "**Buildings**" shall have the meanings set forth in the Preamble.

1.17 "**Bylaws**" shall mean the Bylaws of the Association as the same may be amended from time to time.

1.18 "**City**" shall mean the City of Pismo Beach in the State of California, and its various departments, divisions, employees and representatives.

1.19 "**Claimant**" shall have the meaning set forth in Section 21.12.1 hereof.

1.20 "**Close of Escrow**" shall mean the date on which a deed is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.21 "**Commercial Users**" shall mean the Commercial Owners, their tenants and their guests, licensees, subtenants, contractors, employees, agents, customers who will be accessing and/or using the Commercial Units.

1.22 "**Common Area**" shall mean the Lot 1 Common Element. Notwithstanding the foregoing, any structural elements within any Unit that support Units or Common Area other than the Unit in which such structural elements are located (*e.g.*, interior columns or beams running between the floor and ceiling of a Unit but located in the middle of a room) (collectively, "**Unit Interior Common Structural Elements**") shall be deemed part of the Common Area. The Common Area is further classified as follows:

1.22.1 "**General Common Area**" shall mean all Common Area that is not designated as "Residential Common Area" and which is for the common benefit of both the Commercial Condominiums and the Residential Condominiums.

1.22.2 "**Residential Common Area**" shall mean the Common Area that is designated "Residential Common Area" on the Condominium Plan or which is otherwise restricted in use to the Owners of the Residential Condominiums and their tenants, guests and invitees (including Hotel Guests). The Residential Common Area shall include the pool area, residential elevators, recreation/fitness room and furnishings therein, and utility room floors, and the Residential Garage.

1.23 "**Exclusive Use Common Area**" shall mean those portions of the Common Area designated in the Condominium Plan over which exclusive easements are reserved for the exclusive use of one or more, but fewer than all, of the Owners of Condominiums. The Exclusive Use Common Area shall include the Balcony Areas, Patio Areas and the Porte Cochere as shown on the Condominium Plan, in accordance with California Civil Code Section 1351(i).

1.24 "**Common Expenses**" shall mean those expenses for which the Association is responsible under this Declaration, including, without limitation, the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area and Dedication Area; unpaid Remedial Assessments, Reconstruction Assessments, Reimbursement Assessments, Special Assessments and Capital Improvement Assessments; the cost of maintenance of recreational facilities, if any, on the Common Area; the costs of graffiti removal for all exterior surfaces of the Building; the costs of any and all utilities metered to more than one Unit and other commonly metered charges for the Property; the costs of trash collection and removal (as applicable); the cost of maintenance of clustered mailboxes and address identification signs; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, security (if any) and other services benefiting the Common Area; the costs of insurance covering the Property and the directors, officers and agents of the Association, including, without limitation, fire, casualty, and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Property (subject to the terms of Section 21.2 below); amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners. The Common Expenses shall be further classified as:

1.24.1 "**General Common Expenses**" which shall mean those Common Expenses attributable solely to the General Common Area and/or the general operations, activities, and/or expenditures otherwise performed or incurred by the Association for the benefit of all of the Owners (including the Commercial Owners) and the Project. The General Common Expenses include, without limitation, the salary, benefits and other expenses relating to the Association Personnel; and

1.24.2 "**Residential Common Expenses**" which shall mean those Common Expenses attributable to the Residential Common Area and the Exclusive Use Common Area and/or the operations, activities, and/or expenditures otherwise performed or incurred by the Association solely for the benefit of the Residential Owners. Under no circumstances shall the Commercial Owners be responsible for, and no Assessment shall be levied against any Commercial Owner with respect to, any Residential Common Expenses.

1.24.3 "**Sub-Metered Expenses**" which shall mean the charges and expenses for hot and cold water and gas, if any, which are separately metered for each Condominium. The Sub-Metered Expenses for a particular Condominium shall be billed to each applicable Owner as part of the Regular Assessment for such Owner's Condominium.

1.25 "**Conditions of Approval**" shall mean (a) those certain Conditions of Approval for Case No. 22-CP-85-MOD, 7-CUP-85-MOD imposed by the City of Pismo Beach Planning Commission on November 7, 1989; and (b) any other conditions of approval imposed by any applicable governmental or quasi-governmental agency or authority in connection with the redevelopment of the Property.

1.26 "**Conditions to Reconstruction**" shall have the meaning set forth in Section 13.1 hereof.

1.27 "**Condominium**" shall mean an estate in real property as defined in Section 1351(f) of the California Civil Code, and shall consist of the various elements described in Section 2.1. A Condominium shall be classified as either a "Residential Condominium," "Hotel Condominium," or "Restaurant Condominium" based on the intended use of such Condominium. A "**Commercial Condominium**" means either the Hotel Condominium or Restaurant Condominium.

1.28 "**Condominium Plan**" shall mean the Recorded condominium plan(s), as amended from time to time, for the Property.

1.29 "**County**" shall mean the County of San Luis Obispo in the State of California, and its various departments, divisions, employees and representatives.

1.30 "**Declarant**" shall mean Heron Crest Development, a California general partnership, and its successors and assigns.

1.31 "**Declarant's Agents**" shall have the meaning set forth in Section 21.12.1 hereof.

1.32 "**Declaration**" shall mean this instrument as it may be amended or supplemented from time to time.

1.33 "**Dedication Area**" means Lot 2 of Tract No. 1857 in the City of Pismo Beach, County of San Luis Obispo, State of California, according to map recorded February 24, 1992 in Book 16 at page 65 of Maps, in the Office of the County Recorder of said County, which Declarant owns, which Declarant has offered to convey to the City, which the Association is obligated to maintain and over which an easement has been or will be granted for purposes of accomplishing the same, and which Declarant reserves the right to convey to the Association subject to this Declaration and all matters of record (including offers to dedicate) as provided herein.

1.34 "**Deed of Trust**" shall mean a "Mortgage" (as further defined below).

1.35 "**Developer Units**" shall mean and refer to all of the separate Units proposed for the Project (including Residential Units and Commercial Units) (other than Residential Units or

Commercial Units which have been conveyed to "Retail Purchasers" (as defined below)). For purposes of this Section only, and in no way limiting the rights of Declarant to modify the Project or the actual number of Units within the Project, the total number of projected Developer Units for the Project as of the date of this Declaration is seventy-two (72) (including seventy (70) Residential Units and two (2) Commercial Units).

1.36 "**Dispute**" shall have the meaning set forth in Section 21.19.1 hereof.

1.37 "**DRE**" shall mean the California Department of Real Estate and any successors thereto.

1.38 "**Emergency Situation**" shall have the meaning set forth in Section 7.4.4 hereof.

1.39 "**Events of Disclosure**" shall have the meaning set forth in Section 17.5.2 hereof.

1.40 "**Family**" shall mean one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household.

1.41 "**Federal Agencies**" shall mean and refer to collectively one or more of the following agencies and the following letter designation of such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: "**VA**" (United States Department of Veterans Affairs) "**FHLMC**" (Federal Home Loan Mortgage Corporation), "**FNMA**" (Federal National Mortgage Association), and "**GNMA**" (Government National Mortgage Association).

1.42 "**Final Subdivision Public Report**" shall refer to that report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

1.43 "**First Mortgage**" shall have the meaning set forth in the definition of "Mortgage" herein below.

1.44 "**First Mortgagee**" shall have the meaning set forth in the definition of "Mortgagee" herein below.

1.45 "**Fiscal Year**" shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.46 "**Governing Documents**" shall mean the Articles, Bylaws, and this Declaration.

1.47 "**Guest Parking Areas**" shall mean the above ground parking spaces in the Condominium Plan which are available for use by Residential Guests and Commercial Users on a first-come, first-serve basis. Declarant reserves the right to designate which spaces may be used exclusively by Commercial Users.

1.48 "**Hotel Guests**" shall have meaning set forth in Recital D of the Preamble.

1.49 **"Hotel Leasing Program"** shall have the meaning set forth in the Preamble herein. The Hotel Operator shall provide additional information with respect to the Hotel Leasing Program.

1.50 **"Hotel Operator"** shall mean the Owner of the Hotel Unit, or such management company as may be hired by the Hotel Owner from time to time to operate the Hotel Unit and the Hotel Leasing Program.

1.51 **"Hotel Signage Sites"** shall mean the spaces for signage located on the exterior wall of the elevator tower on Building 2, and those areas along the driveway into the Project, as depicted on Exhibit A attached hereto.

1.52 **"Improvements"** shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, building structures, parking structures, parking areas, walkways, sprinkler pipes, carports, recreational facilities, swimming pool, driveways, fences, screening walls, block walls, retaining walls, awnings, stairs, elevators, decks, landscaping, antennae, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces.

1.53 **"Increase Election"** shall have the meaning set forth in Section 7.4.1 hereof.

1.54 **"Institutional Mortgagee"** shall mean and refer to a "First Mortgagee" (as defined below) which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

1.55 **"Lease Addendum"** shall have the meaning set forth in Section 15.4.1 hereof.

1.56 **"Lot 1 Common Element"** shall mean Lot 1 of Tract No. 1857, excepting the seventy (70) Residential Units and two (2) Commercial Units therein.

1.57 **"Maintenance Standards"** shall mean the maintenance guidelines and standards set forth in any materials provided by Declarant to the Association and/or any Owner relating to the Common Area and/or the Units.

1.58 **"Management Contract"** shall have the meaning as set forth in Section 4.6 hereof.

1.59 **"Manager"** shall mean the Person employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, power or functions of the Association as limited by this Declaration, the Bylaws and the terms of any agreement between the Association and said Person.

1.60 **"Manufactured Products"** shall have the meaning set forth in Section 21.12.7 hereof.

1.61 **"Maximum Interest Rate"** shall mean a rate of interest not to exceed twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less.

1.62 "**Member**" shall mean any Person holding a Membership in the Association by virtue of such Person's ownership of a Condominium in the Project, as provided in this Declaration.

1.63 "**Membership**" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

1.64 "**Mortgage**" shall mean any Recorded mortgage or deed of trust or other conveyance of one or more Condominiums or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. A "**First Mortgage**" shall refer to a Mortgage which has priority over all other Mortgages encumbering a specific Condominium.

1.65 "**Mortgagee**" shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. The term "Beneficiary" shall be synonymous with the term Mortgagee. A "**First Mortgagee**" shall mean the holder of a First Mortgage.

1.66 "**Mortgagor**" shall mean a Person who mortgages such Person's property to another (*i.e.*, the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term Mortgagor.

1.67 "**Noise Guidelines**" shall have the meaning set forth in Section 10.14 hereof.

1.68 "**Noise Reduction Measures**" shall have the meaning set forth in Section 10.14 hereof.

1.69 "**Notice and Hearing**" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws, and in accordance with Section 7341 of the California Corporations Code.

1.70 "**Notice of Lien**" shall have the meaning set forth in Section 7.11 hereof.

1.71 "**Notice of Release**" shall have the meaning set forth in Section 7.11 hereof.

1.72 "**Notice of Repair Issue**" shall have the meaning set forth in Section 21.12.2 hereof.

1.73 "**Operating Fund**" shall have the meaning set forth in Section 7.2.1 hereof.

1.74 "**Owner**" shall mean the Person or Persons, including Declarant, holding fee simple interest to a Condominium. The term "Owner" shall include a seller under an executory contract of sale but shall exclude Mortgagees. As used in this Declaration, an Owner shall be a "Residential Owner" or a "Commercial Owner."

1.74.1 "**Residential Owner**" shall mean an Owner of one or more Residential Condominiums.

1.74.2 "**Commercial Owner**" shall mean the Owner of any Commercial Condominium.

(a) "**Hotel Owner**" shall mean the Owner of the Hotel Condominium.

(b) "**Restaurant Owner**" shall mean the Owner the Restaurant Condominium.

1.75 "**Patio Areas**" shall mean the patios located on the first floor of each Building identified on the Condominium Plan with a "P" prefix before the Unit No. to which it is exclusive, and which serve Unit Nos. 111 through 116 (inclusive), 121 through 125 (inclusive), and 131 through 135 (inclusive). The Patio Areas shall be a part of the Exclusive Use Common Area.

1.76 "**Person**" shall mean a natural individual or any entity with the legal right to hold title to real property.

1.77 "**Porte Cochere**" shall mean that certain porte cochere which is designated on the Condominium Plan as Exclusive Use Common Area to the Hotel Condominium.

1.78 "**Power of Attorney**" shall have the meaning as set forth in Section 9.2.4 hereof.

1.79 "**Project**" shall mean the entire Property, including, without limitation, those portions which are, from time to time, divided into Condominiums, including the Common Area and the Units therein. The Project is a "condominium project" as defined in Section 1351(f) of the California Civil Code.

1.80 "**Property**" shall mean all the real property described in Paragraph A of the Preamble of this Declaration. The Property is a "common interest development" as defined in Section 1351(c) of the California Civil Code.

1.81 "**Purchaser**" shall have the meaning set forth in Section 7.1 hereof.

1.82 "**Reconstruction Certificate**" shall have the meaning set forth in Section 13.1 hereof.

1.83 "**Record**," "**File**," and/or "**Recordation**" shall mean, with respect to any document, the recordation or filing of such document in the Office of the San Luis Obispo County Recorder.

1.84 "**Remaining Units**" shall have the meaning set forth in Section 14.2 hereof.

1.85 "**Rent**" shall have the meaning set forth in Section 15.9(a) hereof.

1.86 "**Repair Issue**" shall have the meaning set forth in Section 21.12.1 hereof.

1.87 "**Reserve Fund**" shall have the meaning set forth in Section 7.2.1 hereof.

1.88 "**Residence**" shall mean a Unit (other than a Commercial Unit), together with any Exclusive Use Common Area reserved for the benefit of such Unit.

1.89 "**Residential Garage**" shall mean the subterranean parking areas located under each Building.

1.90 "**Residential Guests**" shall mean the guests of any Residential Owner or tenant occupying a Residential Condominium.

1.91 "**Residential Parking Spaces**" shall mean parking spaces G1001 through G1040 (inclusive), G2001 through G2042 (inclusive), and G3001 through 63039 (inclusive) which are located in the Residential Garage and identified on the Condominium Plan.

1.92 "**Restaurant**" shall mean the food service and cocktail lounge which is operated in the Restaurant Condominium.

1.93 "**Restaurant Signage Sites**" shall mean the spaces for signage located along the driveway in the Project and adjacent to the Porte Cochere, as depicted on Exhibit "B" attached hereto.

1.94 "**Restaurant Users**" shall mean those guests, licensees, contractors, employees, agents, and customers, other than Residential Owners and Hotel Guests, who will be accessing and patronizing the Restaurant.

1.95 "**Restrictions**" shall mean this Declaration, the Articles, Bylaws, the Association Rules, the Architectural Rules, and the Conditions of Approval from time to time in effect.

1.96 "**Retail Purchaser**" shall mean any Owner of a Unit other than Declarant.

1.97 "**Right to Repair Act**" shall mean California Civil Code Sections 895 through 945.5 (as same may be amended from time to time).

1.98 "**Separate Interest**" or "**Unit**" shall mean a "separate interest" in space as defined in Section 1351(f) of the California Civil Code. Each Separate Interest or Unit shall be a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of any Improvements and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of any Improvements as constructed or reconstructed.

1.98.1 "**Commercial Unit(s)**" shall mean the Hotel Unit and/or the Restaurant Unit.

1.98.2 "**Hotel Unit**" shall mean the unit defined as "Hotel" in the Condominium Plan, which is currently contemplated to be utilized for commercial rather than residential purposes, subject to the terms and conditions hereof pertaining thereto.

1.98.3 "**Residential Unit**" shall mean any Unit(s) other than Commercial Units, which are currently contemplated to be utilized for residential rather than commercial purposes, subject to the terms and conditions hereof pertaining thereto.

1.98.4 "**Restaurant Unit**" shall mean the unit defined as "Restaurant" in the Condominium Plan, which is currently contemplated to be utilized for commercial rather than residential purposes, subject to the terms and conditions hereof pertaining thereto.

1.99 "**Special Meeting**" shall have the meaning set forth in Section 14.6.2 hereof.

1.100 "**Square Footage**" shall mean, (a) for Commercial Units, the number of gross square feet comprising the Commercial Unit; (b) for Residential Units, the number of gross square feet comprising the Residential Unit; and (c) for Residential Common Area, the gross square footage of the area comprising the Residential Common Area. For Commercial Units, the Square Footage shall include, but not be limited to, restrooms, patios or balconies, but shall not include parking attributable to such Unit. For Residential Units, the Square Footage shall not include Exclusive Use Common Area attributable to such Unit. Notwithstanding anything contained herein to the contrary, Square Footage shall not be determinative of the boundaries of the Unit itself. Square Footage is for the purpose of calculating the allocation of Assessments and such other calculations among the various Commercial Units and Residential Units as provided herein and shall be calculated on a consistent basis. Notwithstanding the foregoing, in the event that the Square Footage calculations are being used in this Declaration to allocate costs, Assessments or other charges among the Residential and Commercial Units, the Square Footage of each Residential Unit shall also include its proportionate share of the Square Footage of the Residential Common Area.

1.101 "**Tenant Improvements**" shall have the meaning set forth in Section 6.10 hereof.

1.102 "**Tract No. 1857**" shall have the meaning set forth in Recital A hereof.

1.103 "**Transfer Date**" shall have the meaning set forth in Section 6.1.2 hereof.

1.104 "**Unit Interior Common Structural Elements**" shall have the meaning set forth in the definition of "Common Area" above.

ARTICLE II.
OWNERSHIP ELEMENTS/ASSOCIATION MEMBERSHIP/COMMON AREA

2.1 **Ownership Elements**. As a mixed-use project, the Project contains separate ownership elements applicable to the commercial and residential components as set forth herein.

2.1.1 **Residential Condominium**. Each Residential Condominium shall contain the following separate elements:

(a) **Residential Unit**. A fee simple interest in the applicable Residential Unit as identified on the Condominium Plan. Each Residential Unit shall be separately shown, numbered and designated on the Condominium Plan and shall be a separate element which, except as otherwise shown on the Condominium Plan, shall consist of all space and Improvements bounded by and contained within the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of the Building containing said Unit. Each of said Units includes both the portions of the Building so described and the airspace so encompassed, excepting therefrom, bearing walls, structural columns, false columns, vertical supports, sub-floors, roofs, foundations, beams, balcony railings, exterior wall surfaces and any central services, pipes, fire sprinkler systems, ducts, flues, chutes, conduits, wires and other utility installations, wherever located within the Units, excluding from this exception, however, outlets thereof within the Units. In the event of any inconsistency between the description(s) contained in this Article and the Condominium Plan, the Condominium Plan shall prevail; *provided, however,* that notwithstanding anything contained herein or in the Condominium Plan, floors and flooring material (*e.g.*, carpeting, wood floors, tile, *etc.*) contained within a Unit shall constitute a portion of such Unit and shall not constitute a portion of the Common Area.

(b) **Interest in Lot 1 Common Element**. A separate element consisting of the Lot 1 Common Element to be owned by the Owners as tenants in common, each as to an equal undivided 1/72 interest therein.

(c) **Exclusive Use Common Area**. An easement appurtenant to each applicable Residential Unit for ingress, egress and exclusive use of the Exclusive Use Common Area assigned to such Unit pursuant to the grant deed by which an Owner acquires such Owner's Unit.

(d) **Right of Use**. A right of use, appurtenant to each Residential Unit, for ingress to, egress from, and use and enjoyment of the General Common Area, and a right of use, appurtenant to each Residential Unit, for ingress to, egress from and enjoyment of the Residential Common Area (except another Owner's Exclusive Use Common Area).

(e) **Membership in the Association**. Each Residential Owner shall be a Member of the Association.

(f) **Nonseverability of Separate Elements**. No Residential Owner shall be entitled to sever such Residential Owner's Unit, or any portion thereof, from the separate elements described in this Section 2.1.1. Such separate element shall be deemed to be conveyed or encumbered with such Owner's Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit.

2.1.2 **Hotel Condominium**. The Hotel Condominium shall contain the following separate elements:

(a) **Hotel Unit**. A fee simple interest in the Unit defined and identified as "Hotel" in the Condominium Plan, which is separately shown, numbered and designated on the Condominium Plan and shall be a separate element which, except as otherwise shown on the Condominium Plan, shall consist of all space and Improvements bounded by and contained within the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of the Buildings containing said Unit. Said Unit includes both the portions of the Buildings so described and the airspace so encompassed, excepting therefrom, bearing walls, structural columns, false columns, vertical supports, sub-floors, roofs, foundations, beams, balcony railings, exterior wall surfaces and any central services, pipes, fire sprinkler systems, ducts, flues, chutes, conduits, wires and other utility installations, wherever located within the Hotel Unit, excluding from this exception, however, outlets thereof within the Unit. In the event of any inconsistency between the description(s) contained in this Article and the Condominium Plan, the Condominium Plan shall prevail; *provided, however*, that notwithstanding anything contained herein or in the Condominium Plan, floors and flooring material (*e.g.*, carpeting, wood floors, tile, *etc*) contained within a Unit shall constitute a portion of such Unit and shall not constitute a portion of the Common Area.

(b) **Interest in Lot 1 Common Element**. A separate element consisting of the Lot 1 Common Element to be owned by the Owners as tenants in common, each as to an equal undivided 1/72 interest therein.

(c) **Exclusive Use Common Area**. An easement appurtenant to each applicable Commercial Unit for ingress, egress and exclusive use of the Exclusive Use Common Area assigned to such Unit, including the Porte Cochere, pursuant to the grant deed by which an Owner acquires such Owner's Unit.

(d) **Right of Use**. A right of use, appurtenant to each Commercial Unit, for ingress to, egress from, and use and enjoyment of the General Common Area.

(e) **Easements**. Easements, appurtenant to each Commercial Unit, across the Residential Common Area as set forth in Article VIII below.

(f) **Membership in the Association**. The Hotel Owner shall be a Member of the Association.

(g) **Nonseverability of Separate Elements**. No Commercial Owner shall be entitled to sever such Commercial Owner's Unit, or any portion thereof, from the separate elements described in this Section 2.1.2 Such separate elements shall be deemed to be conveyed or encumbered with such Commercial Owner's Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit.

2.1.3 **Restaurant Condominium**. The Restaurant Condominium shall contain the following separate elements:

(a) **Restaurant Unit**. A fee simple interest in the Unit defined and identified as "Restaurant" in the Condominium Plan, which is separately shown, numbered and designated on the Condominium Plan and shall be a separate element which, except as otherwise shown on the Condominium Plan, shall consist of all space and Improvements bounded by and contained within the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of the Building containing said Unit. Said Unit includes both the portions of the Building so described and the airspace so encompassed, excepting therefrom, bearing walls, structural columns, false columns, vertical supports, sub-floors, roofs, foundations, beams, balcony railings, exterior wall surfaces and any central services, pipes, fire sprinkler systems, ducts, flues, chutes, conduits, wires and other utility installations, wherever located within the Restaurant Unit, excluding from this exception, however, outlets thereof within the Unit. In the event of any inconsistency between the description(s) contained in this Article and the Condominium Plan, the Condominium Plan shall prevail; *provided, however*, that notwithstanding anything contained herein or in the Condominium Plan, floors and flooring material (*e.g.*, carpeting, wood floors, tile, *etc*) contained within a Unit shall constitute a portion of such Unit and shall not constitute a portion of the Common Area.

(b) **Interest in the Lot 1 Common Element**. A separate element consisting of the Lot 1 Common Element to be owned by the Owners as tenants in common, each as to an equal undivided 1/72 interest therein.

(c) **Exclusive Use Common Area**. An easement appurtenant to each applicable Commercial Unit for ingress, egress and exclusive use of the Exclusive Use Common Area assigned to such Unit, including the restaurant patio dining area, pursuant to the grant deed by which an Owner acquires such Owner's Unit.

(d) **Right of Use**. A right of use, appurtenant to each Commercial Unit, for ingress to, egress from, and use and enjoyment of the General Common Area.

(e) **Easements**. Easements, appurtenant to each Commercial Unit, across the Residential Common Area as set forth in Article VIII below.

(f) **Membership in the Association**. The Restaurant Owner shall be a Member of the Association.

(g) **Nonseverability of Separate Elements**. No Commercial Owner shall be entitled to sever such Commercial Owner's Unit, or any portion thereof, from the separate elements described in this Section 2.1.3. Such separate elements shall be deemed to be conveyed or encumbered with such Commercial Owner's Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit.

2.2 **Delegation of Use**. Any Owner entitled to the right and easement of use and enjoyment of the Common Area may delegate his or her right and easement to his or her tenants, contract purchasers or subtenants who reside in or occupy his or her Condominium, subject to reasonable regulation by the Board.

2.3 **Waiver of Use**. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, or effect the release of his or her Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Area or by abandoning his or her Condominium.

2.4 **Partition**. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall

Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

2.5 **Conditions on Owners' Rights and Easements in Common Area**. The rights and easements of use and enjoyment of the Common Area created by this Declaration shall be subject to the following:

2.5.1 The right of the Board to suspend the rights and easements of any Owner, and the Persons deriving such rights and easements from any Owner, for use and enjoyment of any recreation facilities located on the Residential Common Area, for any period during which the payment of any Assessment against the Owner and his or her Condominium remains delinquent;

2.5.2 Subject to applicable laws and regulations, including, without limitation, applicable building code requirements, the right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Area and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Area for the benefit of the Members of the Association;

2.5.3 The right of the Association, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Area for purposes not inconsistent with the intended use of the Property as a mixed-use residential and commercial project, and provided that same is not in violation of the Restrictions or applicable laws or regulations;

2.5.4 The right of each Owner to the exclusive use and occupancy for the purposes designated in this Declaration of the Exclusive Use Common Area assigned to his or her respective Unit;

2.5.5 The rights and reservations of Declarant, the Hotel Owner, and Restaurant Owner, as set forth in this Declaration;

2.5.6 The right of the Association, acting through the Board, to reasonably restrict access to roofs, equipment rooms, maintenance areas, landscaped areas, and similar areas of the Property;

2.5.7 The right of the Association to reasonably limit the number of guests and tenants of the Residential Owners using the recreational amenities located on the Residential Common Area; and

2.5.8 The right of the Association, acting through the Board, to establish uniform Association Rules for the use of the Common Area in accordance with Section 4.8 of this Declaration.

2.6 **Dedication Area**. Declarant has offered to dedicate the Dedication Area in fee to the City. In the event the City expressly declines to accept the offer to dedicate the Dedication Area, or does not accept the offer to dedicate by December 31, 2010, Declarant reserves the right to convey the Dedication Area to the Association, and the Association shall accept such conveyance subject to any easements, restrictions, offers to dedicate, or other matters of record affecting the same. Notwithstanding acceptance by the City of the offer to dedicate the Dedication Area in fee, or acceptance by the City of any offers to dedicate easements over the Dedication Area, the Association shall nevertheless retain the obligation to maintain the Dedication Area in good order and repair and as further provided in this Declaration or in any other matters of record.

ARTICLE III.
DOLPHIN BAY PROPERTY OWNERS ASSOCIATION

3.1 **Organization of Association**. The Association is or shall be incorporated under the name of Dolphin Bay Property Owners Association, as a nonprofit corporation under the Nonprofit Mutual Benefit Corporation Law of the California Corporations Code.

3.2 **Membership**. Every Owner, upon becoming the Owner of a Commercial Condominium or Residential Condominium, shall automatically become a Member of the Association, and shall remain a Member thereof until such time as such Owner's ownership ceases, at which time such Owner's Membership in the Association shall automatically cease. Ownership of a Commercial Condominium or Residential Condominium shall be the sole qualification for Membership in the Association. The rights, duties, privileges and obligations of all Members of the Association shall be as provided in the Restrictions.

3.3 **Membership/Voting**.

3.3.1 **Classes of Membership**. The Association shall have two (2) classes of voting Membership.

(a) **Class A**. Until such time as the Class B Membership no longer exists, Class A Members shall be all Residential Owners (other than Declarant) and the Commercial Owners (including Declarant). Upon the conversion of the Class B Membership to Class A Membership in accordance with Section 3.3.1(b) below, Class A Members shall be all Owners, including the Commercial Owners and Declarant. The Class A votes shall be allocated as follows:

(i) Each Residential Owner shall be entitled to one (1) vote for each Residential Condominium owned by such Residential Owner;

(ii) The Commercial Owners shall be entitled to the following votes:

Restaurant Owner: 2 votes
Hotel Owner: 4 votes

For purposes of this Section, it is understood that the Commercial Owners shall collectively be entitled at all times to six (6) Class A votes even if a Commercial Owner is the Declarant.

(b) **Class B**. The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Developer Unit owned by Declarant, provided that, solely for the purpose of counting votes in order to determine when Class B Membership shall cease and convert to Class A Membership, as provided in Subparagraph (i) below, Declarant shall be entitled to five (5) votes for each Developer Unit owned by Declarant. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

(i) When the total outstanding votes held by Class A Members equals the total outstanding votes held by the Class B Member; or

(ii) Ten (10) years from the date of issuance of the most recent Final Subdivision Public Report with respect to any part of the Property (the "**Conversion Date**"); *provided* that if at the time of the Conversion Date less than seventy-five percent (75%) of the Units have been sold to Retail Purchasers, the Conversion Date shall be extended for consecutive two (2) year periods until seventy-five percent (75%) of the Units have been sold to Retail Purchasers.

3.3.2 **Joint Owners Disputes**. The one (1) vote for each Residential Condominium and the multiple votes for each Commercial Unit must be cast as a unit; fractional votes shall not be allowed. In the event that the joint Owners of any Condominium are unable to agree among themselves as to how their one vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owners cast a vote representing a Condominium, it will thereafter be conclusively presumed for all purposes that the Owner(s) were acting with the authority and consent of all other Owners of the same Condominium. In the event more votes are cast than are allocated for a particular Condominium, none of said votes shall be counted and said votes shall be deemed void.

3.3.3 **Residential Seat**. To assure Residential Owners' representation on the Board, at least one (1) of the directors on the Board shall have been elected solely by the vote of the Residential Owners, other than Declarant, for so long as a majority of the voting power of the Association resides in Declarant. A director who has been elected to office solely by the vote of Residential Owners other than Declarant may be removed from office prior to the expiration of such director's term of office only by the vote of at least a majority of the voting power residing in Residential Owners other than Declarant.

3.3.4 **Commercial Seat**. To assure the Commercial Owners' representation on the Board, at least one (1) of the directors on the Board shall be elected solely by the vote of the Commercial Owners (the "**Commercial Director**"). In selecting such Commercial Director each Commercial Owner shall be entitled to the number of votes allocated to the Commercial Unit(s) owned by such Commercial Owner in Section 3.3.1(a) above and the Person receiving the greatest number of votes shall assume such Commercial Director position. Such Commercial Director may be removed from office prior to the expiration of such director's term only by a vote of at least a majority of the voting power residing in the Commercial Owners. Any vacancy caused by the resignation shall be filled in a similar manner and not by the remaining directors on the Board. In the event the Board is comprised of more than five (5) directors, the Commercial Owners shall be entitled to elect the greater of (a) two (2) directors or (b) twenty percent (20%) of the number of directors on the Board.

3.3.5 **Declarant Representation Rights**. Notwithstanding any other provisions herein to the contrary, until such time as all Residential Condominiums have been sold to Retail Purchasers, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of directors on the Board.

3.3.6 **Commencement of Voting Rights**. Except for the Declarant, voting rights attributable to the Condominiums shall not vest until Assessments have been levied in accordance with the provisions of this Declaration or otherwise covered by a maintenance or subsidy program; *provided, however*, the foregoing provisions shall not operate to preclude Declarant from being vested with Class B voting rights for each and every unsold Condominium set forth in the Condominium Plan. For example, if there are thirty (30) sold Units and the Condominium Plan provides for seventy-two (72) Units, then the Declarant would be entitled to Class B voting rights for forty-two (42) Units (72-30).

ARTICLE IV.
MANAGEMENT OF PROJECT

4.1 **Duties and Powers**. The duties and powers of the Association are those set forth in the Restrictions, together with its general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Restrictions.

4.2 **General Duties of the Association**. The Association through the Board shall have the duty and obligation to:

(a) enforce the provisions of this Declaration, the Articles, Bylaws and Association Rules, by appropriate means and carry out the obligations of the Association hereunder;

(b) maintain in good and attractive condition and repair, and otherwise manage the following:

(i) the Common Areas and all Improvements thereon, and the Dedication Area; *provided, however,* that to the extent the Association fails to maintain the Common Area and Dedication Area in good order and repair, upon reasonable notice by the City, the City may have such repair or maintenance work done to the Common Area and Dedication Area at the Association's expense;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, Article V of this Declaration entitled "Repair and Maintenance";

(c) pay any real and personal property taxes and other charges assessed to or payable by the Association;

(d) obtain, for the benefit of the Common Areas, water, gas and electric, refuse collections and other services;

(e) pursuant to California Civil Code Section 1365.2, make available the books, records and financial statements of the Association for inspection by Owners and First Mortgagees during normal business hours;

(f) comply with provisions of California law relating to the operation of a common interest development, including, without limitation, the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), as same may be amended from time to time;

(g) conduct the annual inspection described in Section 16.1 below;

(h) keep the Common Areas clean and free of debris and rubbish and promptly remove any graffiti from walls and other surfaces in accordance with any applicable laws;

(i) undertake well-informed decisions based on fair and objective information, and engage in actions which achieve objectives without unnecessary controversy and/or disruption to the Development; and

(j) avoid litigation and/or adversarial proceedings, and, prior to engaging in any adversarial proceedings in accordance with this Declaration, submitting same to good faith, confidential mediation.

4.3 **General Powers of the Association**. The Association through the Board shall have the power but not the obligation to:

(a) install or construct capital Improvements on the Common Area;

(b) reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area;

(c) cause vehicles to be removed from the Property pursuant to California Vehicle Code Section 22658.2;

(d) employ personnel necessary for the effective operation and maintenance of the Common Area (if any), including the employment of administrative and security personnel and other maintenance, engineering, management and valet personnel. The Association may also engage the services of outside contractors, consultants and professionals, including legal, engineering, management and accounting firms;

(e) convey easements over all or any portion of the Common Area (including the Lot 1 Common Element);

(f) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members; and

(g) borrow money in a total amount not to exceed ten percent (10%) of the then existing estimated annual Common Expenses, as may be needed in connection with the discharge by the Association of its powers and duties.

4.4 **Budgets and Financial Statements**. The Board shall make available books, records and financial statements of the Association for inspection by each Member and First Mortgagee. The Association shall prepare and distribute to all Members all of the items set forth in Section 1365 of the California Civil Code.

4.5 **Reserve Study**. The Board shall conduct a reserve study at least once every three (3) years as provided in Section 1365.5 of the California Civil Code, including, without limitation, a competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain.

4.6 **Use of Agent**. The Board, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such contract ("**Management Contract**") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association, in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Project shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

4.7 **Limitations on Powers of the Board**.

4.7.1 Notwithstanding the powers of the Association as set forth in Sections 4.1 and 4.3 hereof, the Board shall not take any of the following actions without the prior vote or written consent of a majority of the Class A Members and the Class B Members, if any, in the Association, including a majority of the voting power residing in Members other than Declarant.

(a) Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; *provided,* *however*, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(iii) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(iv) An agreement for cable television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(v) An agreement for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incur aggregate expenditures for capital improvements to the Common Area in any accounting year in excess of five percent (5%) of the gross expenses of the Association for that accounting year (as set forth in the Budget).

(c) Pay compensation to members of the Board, or to officers of the Association, for services performed in the conduct of the Association's business; *provided, however*, the Board may cause a director or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(d) Sell during any accounting year property of the Association having an aggregate fair market value greater than five percent (5%) of the gross expenses of the Association for that accounting year (as set forth in the Budget).

4.8 **Association Rules**. By a majority vote of the Board, the Association may, from time to time, adopt, amend, and repeal the Association Rules. The Association Rules shall govern the use of the Common Area by any Owner, or by any invitee, licensee, customer, or lessee of such Owner, by the Family of such Owner, or by any invitee, licensee or lessee of the Family of such Owner; *provided, however*, the Association Rules may not discriminate among Owners and shall not be inconsistent with the Restrictions. Notwithstanding the foregoing, under no circumstances shall any Association Rules affecting the Commercial Units be implemented, modified or amended without the consent of the Commercial Owners. A copy of the Association Rules as they may from time to time be amended, adopted or repealed, shall be mailed or otherwise delivered to each Owner. The amendment or repeal of the Association Rules and any portion thereof, if any, shall become effective thirty (30) days after satisfaction of any applicable notice requirements set forth in California Civil Code Sections 1357.130 and 1357.140, and said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between any such

Association Rules and any of the other provisions of the Restrictions, the provisions of such Association Rules shall be deemed to be superseded by the provisions of the Restrictions to the extent of such inconsistency.

4.9 **Scope of Duties**. The duties of the Owners and the Association set forth in this Section shall be in addition to all duties imposed by Sections 1368, 1368.4 and 1375 of the California Civil Code, as amended from time to time.

ARTICLE V.
REPAIR AND MAINTENANCE

5.1 **Repair and Maintenance by the Association**.

5.1.1 **Maintenance Standards**. Subject to Article XIII pertaining to destruction of Improvements and Article XIV pertaining to eminent domain, the Association shall maintain, repair and replace the Common Area and Improvements thereon, and the Dedication Area, or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Area and Improvements thereon, and Dedication Area in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DRE and the Maintenance Standards; *provided, however*, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or improvement of the Units or Exclusive Use Common Area, the maintenance of which is the responsibility of the Owners as provided in Section 5.2 hereof. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area; *provided, however*, at any time within the ten (10) year period after the sale of the first Unit, the Board may not elect to decrease the level of maintenance below that required by the Maintenance Standards without the prior written approval of the Declarant. Notwithstanding any other provision herein, under all circumstances, all repair and maintenance performed by the Association shall be in compliance with any and all applicable requirements of the City and/or any other governmental body with jurisdiction over the Property, including, without limitation, any applicable building code requirements and requirements to obtain building or improvement permits.

5.1.2 **Maintenance Items**. Association maintenance and repairs shall include, without limitation:

(a) the right, without obligation, to perform all corrective janitorial and repair work within any Unit, if the applicable Owner fails to repair it (provided, in such event, the Board shall levy a Reimbursement Assessment against such Owner and such Owner's Unit);

(b) the repair and payment for all centrally-metered utilities, water charges, and mechanical and electrical equipment (including elevators) in the Common Area; payment of all charges for all utilities which serve individual Units but which are subject to a common meter;

(c) payment of all Common Expenses and charges for water and utilities serving recreational amenities;

(d) the repair, maintenance and periodic structural repair and replacement of all Common Area Improvements, including, without limitation, all walls, fences, motorized gates, garage improvements, elevators, security and life safety systems, fire sprinklers, fountains, lighting fixtures, swimming pools, fitness equipment, walks, private driveways and other means of ingress and egress within the Property; and

(e) the periodic structural repair, resurfacing, sealing, striping, caulking, or replacement of the Exclusive Use Common Area, so long as the need for any of these activities is not caused by the willful or negligent acts of the Owner to whom the Exclusive Use Common Area is assigned or any of such Owner's Family, tenants, invitees, licensees, customers, or guests.

5.1.3 **Charges to Owners**. All such costs of maintenance, repairs and replacements for the Common Area to be maintained, repaired and/or replaced by the Association shall be paid for as either General Common Expenses or Residential Common Expenses out of the Association Maintenance Funds as provided in this Declaration. Notwithstanding the foregoing, the cost of any maintenance, repairs or replacements by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an Owner or such Owner's Family, tenants, guests, invitees, or agents shall, after Notice and Hearing, be levied by the Board as a Reimbursement Assessment against such Owner.

5.2 **Repair and Maintenance by Owners**. Each Owner shall maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and restored, at such Owner's sole expense, all portions of his or her Unit, including, without limitation, shower pans within any bathrooms, heating, ventilation and air conditioning ("**HVAC**") equipment serving such Unit (wherever same may be located), as well as the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, such Owner's Unit, and the interior surfaces of the walls, ceilings, floors, permanent fixtures and firebox in the fireplace, in a clean, sanitary and attractive condition, in accordance with the Condominium Plan, applicable Maintenance Standards, the Association Rules, and the original construction design of the Improvements in the Project. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the Building shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Committee. It shall further be the duty of each Owner, at such Owner's sole expense, to keep the Exclusive Use Common Area over which an exclusive easement has been reserved for the benefit of such Owner free from debris and reasonably protected against damage. However, no Owner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of such Owner's assigned Exclusive Use Common Area, so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or such Owner's Family, tenants, invitees, licensees, customers or guests. Notwithstanding any other provision herein, each Owner shall also be responsible for all maintenance and repair of any internal or external telephone and/or Cable television wiring (including, without limitation, such wiring utilized for internet service or other electronic communication) and HVAC ducts and conduit, wherever located, which is designed to serve only such Owner's Unit, and shall be entitled to reasonable access over the Common Area for such purposes, subject to reasonable limitations imposed by the Association. It shall further be the duty of each Owner to pay when due all charges for any utility service which is separately metered to such Owner's Unit. Subject to any required approval of the Architectural Committee, each Owner shall be responsible for maintaining those portions of any heating and cooling equipment and other utilities which are located within or which exclusively serve such Owner's Unit.

5.3 **Maintenance Log**. The Association and each Owner shall maintain a comprehensive maintenance log which details all maintenance actions and compliance with the maintenance provisions set forth in this Declaration (including, without limitation, the Maintenance Standards).

5.4 **Minimum Standards for Landscaping**. No more than five percent (5%) of landscaping in the Common Area shall be turf, and all landscaping in planted areas shall be continually maintained in a good condition and shall be kept clean and weeded; dead or dying plant material shall be replaced in a timely manner.

ARTICLE VI.
ARCHITECTURAL CONTROL

6.1 **Architectural Committee**.

6.1.1 **Establishment of Committee**. The Architectural Committee is hereby created, consisting of three (3) individuals, for the purpose of establishing and maintaining specific architectural control for the Property. Except as otherwise provided herein, under no circumstances shall any Improvements be constructed or installed upon the Property without the prior consent of the Architectural Committee in accordance with this Article.

6.1.2 **Initial Members**. Prior to the "Transfer Date" (as hereinafter defined), members of the Architectural Committee shall be designated by Declarant. All of the rights, powers and duties of the Architectural Committee as set forth in this Article are hereby delegated to the Architectural Committee established hereby. Such delegation may not be revoked except by Declarant until the later to occur of (i) expiration of five (5) years after the first sale of a Residential Unit, or (ii) sale by Declarant of ninety percent (90%) of the Residential Units (the "**Transfer Date**").

6.1.3 **Appointment, Removal and Resignation**. After the Transfer Date, the right to appoint and remove all members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board; *provided, however*, no initial member of the Architectural Committee, nor any successor appointed by Declarant for an initial member who dies or resigns, may be removed except by Declarant prior to the expiration of such member's term of office pursuant to Section 6.1.2 above. Notwithstanding the foregoing, at all times the Commercial Owners shall have the right to appoint one (1) member to the Architectural Committee by vote of a majority of the voting power residing in the Commercial Owners. Any member of the Architectural Committee may at any time resign from the Architectural Committee by giving written notice thereof to the Declarant, if, pursuant to this subparagraph, Declarant has the right to appoint a successor to such member, or, if Declarant does not have the right, to the Board.

6.1.4 **Vacancies**. Except as otherwise provided in Sections 6.1.2 and 6.1.3, after the Transfer Date, all vacancies, however caused, on the Architectural Committee shall be filled by vote of a majority of the Board; *provided* that any vacancy, however caused, of the seat held by the member appointed by the Commercial Owners shall be filled by vote of a majority of the voting power residing in the Commercial Owners. A vacancy shall be deemed to exist in case of the death, resignation or removal of any member of the Architectural Committee. Failure of the Board to fill any vacancy in the Architectural Committee shall not prevent: (i) the running of the sixty (60) day automatic approval period specified in Section 6.5.7; or (ii) action by the Architectural Committee on any matter to the extent that a majority thereof each join in and consent thereto.

6.2 **Approval Required**. The Architectural Committee shall be responsible to review and regulate, in accordance with this Article, those matters pertaining to the design and appearance of the Property (other than aesthetic (*i.e.*, non-structural) changes to the interior elements of the Units), all proposed structural or other alterations or modifications to any Improvements in the Project, and such other matters pertaining to the Property. Except as otherwise provided herein, under no circumstances shall any Improvements be installed upon the Property without the prior consent of the Architectural Committee in accordance with this Article.

6.3 **Meetings and Compensation**. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) members, at a meeting or otherwise, shall constitute the act of the Architectural Committee. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not receive any compensation for services rendered.

6.4 **Duties**. It shall be the duty of the Architectural Committee to:

6.4.1 consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof;

6.4.2 ensure that any Improvements constructed on the Property by anyone other than the Declarant conform to plans approved by the Architectural Committee and otherwise comply with applicable laws and regulations;

6.4.3 if requested by Declarant or the Association, to adopt Architectural Committee rules (the "**Architectural Rules**");

6.4.4 to perform other duties delegated to it by the Declarant within the time periods set forth herein and thereafter by the Board; and

6.4.5 to carry out all other duties imposed upon it by this Declaration.

Notwithstanding the foregoing, under no circumstances shall any Architectural Rules affecting the Commercial Units be adopted, modified, or amended without the consent of the Commercial Owners. The Architectural Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or Improvements on the Property or any portion thereof.

6.5 **Operation of Committee**. The Architectural Committee shall function as follows:

6.5.1 The Architectural Committee may require the submission to it of any or all of the following documents and such additional documents which it determines to be reasonably appropriate to the activity for which consent is requested:

(a) a written description;

(b) plans and specifications;

(c) copies of all permits and all submittals with respect to same;

(d) schematics;

(e) an acoustical report, if applicable;

(f) elevations; and

(g) such other materials or information reasonably requested by the Architectural Committee.

6.5.2 All submissions to the Architectural Committee shall:

(a) show the name and address of the party submitting the same;

(b) be in triplicate;

(c) be deemed made when actually received by the Architectural Committee; and

(d) state in writing the specific matters for which approval is sought.

6.5.3 The Architectural Committee, before giving such approval, may require that changes be made to comply with such requirements as the Architectural Committee may, in its absolute discretion, impose as to structural features of any proposed Improvement, the types of materials used, or other features or characteristics thereof not expressly covered by any provisions of this instrument. Notwithstanding the foregoing, no approval by the Architectural Committee shall be deemed to excuse the applicant from complying with the applicable requirements of the City or any other governmental body with jurisdiction over the Property, including, without limitation, any prior planning approvals and building code requirements. In connection therewith, as a condition of approval, the City or such other governmental body may require, as part of any submittal by an Owner, confirmation that the requested modification or Improvement has been considered by and approved by the Architectural Committee. Neither the

Architectural Committee nor the Association shall be liable for any loss, cost, or damage resulting from any delay caused by the Owner's inability to submit an application to the City or any other governmental body prior to the time approval is obtained from the Architectural Committee.

6.5.4 Every Owner, by acceptance of a deed to his or her Unit, acknowledges, recognizes and understands that, notwithstanding any other provision herein, no approval by the Architectural Committee shall be deemed to excuse the applicant from complying with all restrictions herein, in the Association Rules, or with sound building and safety practices, with respect to preservation of the structural integrity of any building in which the Project is a part or to which the Project is connected.

6.5.5 The Architectural Committee, before giving its approval, may impose conditions (including, without limitation, adequate security, in the form of insurance or otherwise, protecting the Association or other Owners) or require changes to be made which in its discretion are required to ensure that the proposed Improvement will not detract from the appearance of the Common Area, or otherwise create any condition unreasonably disadvantageous to other Owners or detrimental to the Property as a whole.

6.5.6 The Architectural Committee shall retain one (1) of the three (3) sets of submitted documents. In the event the Architectural Committee approves or is deemed to approve the activity for which consent is required, the Architectural Committee shall endorse its consent on all three (3) copies and two (2) sets of such documents shall be mailed by the Architectural Committee, postage prepaid, to the address specified by the submitting party unless such party shall elect to accept delivery thereon in person or by agent so authorized in writing.

6.5.7 If the Architectural Committee fails to mail its certificate with regard to any material or matter submitted to it hereunder, within sixty (60) days after submission to it, it shall be conclusively presumed that the Architectural Committee has approved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Architectural Committee, forthwith upon the request of the submitting party, to sign and acknowledge a certificate evidencing such approval. Notwithstanding the foregoing, the approved specific matters shall be subject to the Architectural Rules.

6.5.8 As a condition precedent to its consideration of or action upon any material or matter submitted to it hereunder, the Architectural Committee shall be entitled to receive a reasonable sum fixed by it from time to time for each set of plans, specifications, drawings or other material so submitted. Notwithstanding the provisions of Section 6.5.7, until the requisite sum shall have been paid to it as provided herein, any material delivered to the Architectural Committee shall not be considered to have been submitted to it for the purposes of this Declaration.

6.5.9 All actions of the Architectural Committee shall be noted in the minutes of the Board.

6.5.10 No certificate of the Architectural Committee shall be recorded by the Architectural Committee or any member thereof, but the same may be recorded by the party submitting the material concerning which the certificate was made.

6.5.11 All action by the Architectural Committee authorized in this Declaration, except as otherwise provided herein, shall be within its sole discretion. Notwithstanding the foregoing, the Architectural Committee's written approval or disapproval shall be in good faith, and consistent with all applicable laws, rules and regulations, including, without limitation, the Fair Employment and Housing Act (California Government Code Section 12900 *et seq.*). If disapproved, the Architectural Committee's decision shall include an explanation for the disapproval and a description of the procedure for reconsideration in accordance with California Civil Code Sections 1357.120, 1357.130, and 1357.140.

6.5.12 The provisions of this Article shall not apply with respect to the initial construction by Declarant of Improvements within the Property.

6.6 **Appeal**. In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall hold an open meeting in accordance with California Civil Code Section 1378 for which the disapproved plans and specifications will be reconsidered, and the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant; *provided, however*, the submitted plans and specifications shall remain subject to any Association Rules.

6.7 **Access to Property**. Each member of the Architectural Committee, or any other agent or employee of the Board, shall at all reasonable hours have the right of access to any part of the Property, and to any structures being built thereon, for the purpose of inspection relative to compliance with this Declaration and entry onto any part of the Property in accordance herewith shall not be deemed a trespass.

6.8 **Waiver**. The approval or disapproval by the Architectural Committee of any plans, specifications, drawings, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver by the Architectural Committee of its right to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings or other matters submitted to the Architectural Committee.

6.9 **Liability**. Each Owner shall be solely responsible for any violation of this Declaration, the Architectural Rules, or any applicable instrument, law or regulation, caused by an Improvement made by such Owner even though same is approved by the Architectural Committee. Plans and specifications shall be approved by the Architectural Committee as to style, design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, this Declaration, easements, deed restrictions and other rights and obligations affecting the Property. By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. The Architectural Committee shall have the right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Architectural Committee.

6.10 **Commercial Unit Improvements**. Notwithstanding any other provision herein to the contrary, the Architectural Committee shall not be concerned with, nor have approval rights over, (a) any general exterior modifications to any Commercial Unit, including the Porte Cochere and patio dining areas which are Exclusive Use Common Areas to the Hotel Condominium and Restaurant Condominium, respectively, (b) any signage on the exterior of any Commercial Unit or on the Hotel Signage Sites and Restaurant Signage Sites, or (c) any Improvements to be constructed within the interior portion of any Commercial Unit ("**Tenant Improvements**"), provided that such exterior modifications, signage, and/or Tenant Improvements: (i) do not affect the structural integrity of any of the Common Area; (ii) do not unreasonably affect the overall quality or theme of the Project, and (iii) conform to any use restrictions applicable to Commercial Units as set forth in Article XI hereof. Similarly, the Architectural Committee shall not be concerned with the demising of any Commercial Unit into separate tenant space of varying sizes, including, without limitation, the relocation of exterior doors and doorways necessary or appropriate to permit the re-demising of existing space.

ARTICLE VII.
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1 **Personal Obligation of Assessments**. Declarant, for each Condominium owned by it, hereby covenants and agrees to pay, and each Owner, by acceptance of a deed to a Condominium whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Regular Assessments for Common Expenses, (2) Special Assessments, (3) Reconstruction Assessments, (4) Capital Improvement Assessments, (5) Emergency Assessments, (6) Reimbursement Assessments and (7) Remedial Assessments. Each of the foregoing shall be established and collected as provided herein. The Association shall not levy or collect any such Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 7.1, all such Assessments (other than Remedial Assessments), together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Condominium against which such Assessment is made. Each such Assessment (including Remedial Assessments), together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Condominium at the time when the Assessment fell due. This personal obligation cannot be avoided by abandonment of the Condominium or by an offer to waive use of the Common Area or the Exclusive Use Common Area. The personal obligation for delinquent Assessments shall not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser.

7.2 **Maintenance Funds of Association**. Separate Association Maintenance Funds shall be established for (1) deposits and disbursements related to the General Common Area, and (2) deposits and disbursements related to the Residential Common Area.

7.2.1 **General Common Area**. With respect to the General Common Area, the Board shall establish no fewer than two (2) separate Association Maintenance Fund accounts, into which shall be deposited all monies paid to the Association for maintenance of the General Common Area, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration related to the General Common Area. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (1) a fund for current Common Expenses of the Association ("**Operating Fund**") related to the General Common Area, (2) an adequate fund for capital improvements, replacements, painting and repairs of the General Common Area (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains as provided in Article XII hereof (a "**Reserve Fund**"), and (3) any other funds which the Board may establish with respect to the General Common Area to the extent necessary under the provisions of this Declaration.

7.2.2 **Residential Common Area**. With respect to the Residential Common Area, the Board shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all monies paid to the Association for the maintenance of the Residential Common Area (including the Exclusive Use Common Area) and from which disbursements shall be made, as provided herein, in performance of functions by the Association under this Declaration related to the Residential Common Area. The Association Maintenance Funds for the Residential Common Area may be established as trust accounts at a banking or savings institution and shall include: (1) an Operating Fund for current Common Expenses of the Association related to the Residential Common Area (including the Exclusive Use Common Area); (2) an adequate Reserve Fund for capital improvements, replacements, painting and repairs of the Residential Common Area (including the Exclusive Use Common Area) which cannot normally be expected to occur on an annual or more frequent basis, and for payments of deductible amounts for policies of insurance which the Association obtains as provided in Article XII hereof; and (3) any other funds which the Board may establish with respect to the Residential Common Area (including the Exclusive Use Common Area) to the extent necessary under the provisions of this Declaration. Nothing contained in Section 7.2.1 above, this Section 7.2.2, or any other provision in this Declaration shall limit, preclude or impair the establishment of additional Association Maintenance Funds, so long as the amounts assessed to, deposited into, and disbursed from any such Association Maintenance Fund are earmarked for specified purposes authorized by this Declaration.

7.3 **Purpose of Assessments**. The Assessments levied by the Association shall be used exclusively to (a) promote the recreation, health, safety and welfare of the Owners, (b) operate, replace, improve and maintain the Common Area and, as applicable, the Exclusive Use Common Area, and (c) discharge any other obligations of the Association under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors only for the purposes specified in this Article VII and in Section 1365.5(c) of the California Civil Code, as it may be amended from time to time. Regular Assessments shall be used to satisfy Common Expenses of the Association.

7.4 **Limitations on Regular Assessment Increases**. The Board shall levy Regular Assessments in accordance with the following provisions:

7.4.1 **Maximum Authorized Regular Assessment for Initial Year of Operations**. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Regular Assessments commence, the Board may not levy a Regular Assessment per Unit in an amount which exceeds one hundred twenty percent (120%) of the amount of Regular Assessments disclosed for the Property in the most current Budget filed with and approved by DRE at the time Regular Assessments commence unless the Board first obtains the approval of Members casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Members are represented ("**Increase Election**"); *provided, however*, such limitation shall not apply if the increase in Regular Assessments is pursuant to a revised Budget filed with and approved by the DRE. Notwithstanding the foregoing, this Section does not limit Regular Assessment increases necessary for addressing an Emergency Situation.

7.4.2 **Maximum Authorized Regular Assessment for Subsequent Fiscal Years**. Starting with the first Fiscal Year immediately following the Fiscal Year in which Regular Assessments commence, the Board may only levy Regular Assessments if it has complied with the provisions of Section 1366 of the California Civil Code. Notwithstanding the foregoing, this Section does not limit Regular Assessment increases necessary for addressing an Emergency Situation as provided in Section 1366 of the California Civil Code.

7.4.3 **Supplemental Regular Assessments**. If the Board by majority vote, determines that the important and essential functions of the Association may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all applicable Common Expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in this Article VII, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Condominium.

7.4.4 **Emergency Situations**. Notwithstanding the limitations in the foregoing Sections, Emergency Assessments may be levied to cover expenses arising due to the following situations (each an "**Emergency Situation**"):

(a) An extraordinary expense required by an order of a court;

(b) Restoration of funds transferred from the Reserve Fund to the Operating Fund, as required by Section 1365.5 of the California Civil Code;

(c) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered; or

(d) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget, or the summary thereof, pursuant to Section 1365 of the California Civil Code. Prior to the imposition or collection of an Assessment pursuant to this Section 7.4.4(d), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.

7.5 **Regular Assessments/Commencement-Collection**.

7.5.1 **Regular Assessments**. Regular Assessments relating to the Commercial Units and the Residential Units shall be levied in accordance with this Section. The Budget for the Association shall reflect all of the Common Expenses for the Project. There shall be three (3) components of the Budget: (1) the "Joint Budget" which establishes "**General Regular Assessments**" for the maintenance of the General Common Area and payment of the General Common Expenses, (2) the "Residential Budget" which establishes "**Residential Regular Assessments**" for the maintenance of the Residential Common Area and payment of the Residential Common Expenses, and (3) the "Commercial Budget" which calculates and sets forth the Commercial Owners' portions of the General Regular Assessments. As provided in the Budget, certain Common Expenses shall be borne solely by the Residential Owners, the Commercial Owners, or a combination thereof. Any separately metered utilities which apply to the Commercial Units and separately provided services for the Commercial Units (*e.g.*, trash collection) shall be paid directly by the Commercial Owner and shall not be a part of the Association's Budget. Regular Assessments shall commence on all Condominiums on the first day of the first calendar month following the first Close of Escrow for the sale of a Condominium within the Development. Regular Assessments for fractions of any month involved shall be prorated. Declarant shall pay its full pro rata share of the Regular Assessments on all unsold Condominiums for which Regular Assessments have commenced. Until such time as all Units have been sold by Declarant, Regular Assessments shall be assessed in accordance with the most recent Budget on file with, and approved by, the DRE. Thereafter, the Board shall fix the amount of the Regular Assessment against each Condominium at least thirty (30) days in advance of each Regular Assessment period. Written notice of any change in the amount of any Regular Assessment, Special Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Regular Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

7.5.2 **Allocation of Regular Assessments**. All Residential Regular Assessments shall be in the following two (2) components as set forth in the Budget: (i) an amount assessed equally against the Residential Owners and their Condominiums based upon the number of Condominiums owned by each Residential Owner, and (ii) those certain variable costs listed in the Proration Schedule, if any, of the most recent Budget on file with and approved by the DRE attributable to the cost of insurance, gas, water, paint, roof maintenance, and hot water heating ("**Variable Costs**"). The Variable Costs, if any, will be assessed against each Residential Owner based upon the square footage of the Condominium. All General Regular Assessments (as determined by the Board) shall be allocated between the Commercial Owners and the Residential Owners as follows:

(a) The Commercial Owners shall be responsible for 8.17% of the General Regular Assessments. As set forth in the Commercial Budget, the General Regular Assessments allocated to the Commercial Owners shall thereafter be levied against all of the Commercial Owners and their Condominiums based on the proportional square footage of the Commercial Condominiums owned by a Commercial Owner to the total square footage of all the Commercial Condominiums.

(b) The Residential Owners shall be responsible for 91.83% of the General Regular Assessments. As set forth in the Residential Budget, the General Regular Assessments allocated to the Residential Owners shall thereafter be levied against all of the Residential Owners and their Condominiums based upon the proportional square footage of Residential Condominiums owned by a Residential Owner to the total square footage of all of the Residential Condominiums.

(c) **Sub-Metered Expenses**. Each Owner shall be responsible for all Sub-Metered Expenses, if any, relating to such Owner's Condominium.

7.5.3 **Exemption From Assessment Until Unit Put To Use**. Declarant and any other Owner of a Unit which has not been constructed shall be exempt from payment of that portion of the Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Unit. Any such exemption from the payment of Regular Assessments shall be in effect only until the earlier to occur of (1) the recordation of a notice of completion of the building containing the Unit, or (2) the occupation or use of the Unit.

7.5.4 **Exemption From Assessment Until Common Area Improvement Completed**. Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an Improvement on the Common Area, or (2) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Improvement.

7.5.5 **Payment in Installments**. Each Member shall pay to the Association such Member's Regular Assessments in installments at such frequency and in such amounts as established by the Board. If any installment of a Regular Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Member shall be credited in order of priority first to the applicable Operating Fund, until that portion of the Regular Assessment has been satisfied, and second to the Reserve Fund.

7.5.6 **Maintenance Agreement**. Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Regular Assessments attributable to Units owned by Declarant. Such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE.

7.6 **Capital Improvement Assessments**.

7.6.1 **General Common Area.** The Board may levy upon each Member and such Member's Condominium, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the General Common Area, including fixtures and personal property related thereto; *provided, however*, any proposed Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year for such General Common Area will exceed five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for such General Common Area, shall require the vote or written consent of Residential Owners and Commercial Owners pursuant to an Increase Election. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for such General Common Area if such increase is necessary to address an Emergency Situation. Capital Improvement Assessments levied against any Commercial Unit may only be levied in accordance with Section 7.14 below.

7.6.2 **Residential Common Area**. The Board may levy upon each Residential Owner and his or her Condominium, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Residential Common Area including fixtures and personal property related thereto; *provided, however*, any proposed Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, will exceed five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for such Residential Common Area, shall require the vote or written consent of Residential Owners pursuant to at an Increase Election. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the gross expenses of the Association (as set forth in the Budget) for such Fiscal Year for such Residential Common Area if such increase is necessary to address an Emergency Situation.

7.7 **Remedial Assessments**. Pursuant to this Declaration, the Board may levy a Remedial Assessment against any Condominium to reimburse the Association for costs incurred in bringing such Condominium and its Owner into compliance with provisions of this Declaration and/or the Association Rules. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner and subject thereto.

7.8 **Reimbursement Assessments**. Pursuant to this Declaration, the Board may levy a Reimbursement Assessment against any Condominium to reimburse the Association for materials or services provided by the Association which benefit individual Condominiums, including reimbursement for the costs incurred in repairing damage to Common Area and facilities for which the Owner or Owner's guests or tenants were responsible. Reimbursement Assessments shall also be levied by the Board against an Owner and such Owner's Condominium for any other charge designated as a Reimbursement Assessment in the Restrictions. The Board shall provide notice by first class mail to the Owners subject to a Reimbursement Assessment of any decision to levy such Reimbursement Assessment not less than thirty (30) nor more than sixty (60) days prior to the Reimbursement Assessment becoming due.

7.9 **Special Assessments**. Pursuant to this Declaration, the Board may levy a Special Assessment to fund any budgetary shortfall or to restore any funds transferred from the Association's Reserve Fund. Special Assessments shall also be levied to reimburse the Association for any other charge designated as a Special Assessment in the Restrictions. Notwithstanding the foregoing, the Board shall not impose Special Assessments without first complying with the provisions of California Civil Code Section 1366. The foregoing limitation shall be subject to exception for Emergency Assessments. Special Assessments levied against the Commercial Unit may only be levied in accordance with Section 7.14 below.

7.10 **Delinquency**. Any installment of an Assessment provided for in this Declaration shall be delinquent if not paid by the date fifteen (15) days following the due date as established by the Board. The Board shall be authorized to adopt a system pursuant to which any installment of Regular Assessments, Capital Improvement Assessments, Remedial Assessments, Reimbursement Assessments, Emergency Assessments, Special Assessments or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein, shall bear interest commencing thirty (30) days from the due date until paid at the Maximum Interest Rate. The Board may also require the delinquent Owner to pay a late charge in accordance with Section 1366(d)(2) of the California Civil Code. The Association need not accept any tender of a partial payment of an installment of an Assessment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

7.11 **Creation and Release of Lien**. All sums other than Remedial Assessments assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Condominium. Subject to the requirements of the California Civil Code, including Sections 1367.1 and 1367.4 thereof, the lien shall become effective upon Recordation by the Board or its authorized agent of a notice ("**Notice of Lien**") securing the payment of any Regular, Special, Capital Improvement, Reimbursement, or Reconstruction Assessment or installment thereof, levied by the Association against any Condominium as provided in Section 1367 of the California Civil Code. The Notice of Lien shall state (i) the amount of the Assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium against which the same has been assessed, (iv) the name and address of the Association, (v) the name of the Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien shall be signed by any authorized officer or agent of the Association. The lien shall relate only to the individual Condominium against which the Assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a notice ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release before Recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

7.12 **Enforcement of Liens**. It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by any of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by sale of the Condominium by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Regular, Capital Improvement, Emergency, Reimbursement, Remedial, Special, or Reconstruction Assessments, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was Recorded, provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association, through its agents, shall have the power to bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value for such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

7.13 **Priority of Assessment Lien**. The lien of the Assessments provided for herein, including interest and costs (including attorneys' fees), shall be prior and superior to (a) any declaration of homestead Recorded after the Recordation of this Declaration, and (b) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record made in good faith and for value and Recorded prior to the date on which the Notice of Lien against the respective Condominium was Recorded. Sale or transfer of any Condominium shall not affect the Assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any Assessments thereafter becoming due. When the Beneficiary of a First Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the First Mortgage, or deed in lieu of foreclosure, such Person, his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such Person.

7.14 **Commercial Units**. Under no circumstances shall the percentage allocation of General Common Expenses between the Commercial Owners and the Residential Owners (*i.e.*, 8.17% for the Commercial Owners and 91.83% for the Residential Owners) be modified without the prior written consent of all of the Commercial Owners. Similarly, under no circumstances can the Association reallocate any Residential Common Expenses as General Common Expenses without the prior written consent of the Commercial Owner. Under no circumstances shall any Special, Emergency, Capital Improvement, Reconstruction, Reimbursement or other Assessment be levied against the Commercial Owner for any matters which relate to the residential component of the Project including the Residential Common Areas. In the event such an Assessment is levied with respect to the Common Area, the Commercial Owners' share shall be limited to 7.83%. The purpose of this Section is to ensure that the Association does not attempt to unfairly burden the Commercial Owners for expenses or costs which solely relate to or benefit the Residential Owners and/or the Residential Common Area. This Section shall be broadly interpreted to accomplish such purpose. In the event of any conflict between the provisions of this Section and any other Section of this Declaration, the provisions of this Section control.

ARTICLE VIII.
PROPERTY EASEMENTS AND RIGHTS OF ENTRY

8.1 **Easements**.

8.1.1 **Nature of Easements**. Unless otherwise set forth herein, any easement reserved in this Declaration shall be nonexclusive. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect whether or not referred to, reserved and/or granted in any instrument of conveyance.

8.1.2 **Certain Rights and Easements Reserved to Declarant.**

(a) **Utilities**. There are hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights over the Project for the installation, maintenance, and repair of electric, telephone, security, television, water, gas, sanitary sewer, drainage, and other utility lines and facilities as are needed to service the Project; *provided,* *however*, such easements and rights shall not unreasonably interfere with the use and enjoyment by the Owners of their Condominiums or the Common Area.

(b) **Construction and Sales**. There are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, over the Project as the same may from time to time exist, easements and rights for construction, display (including the use of Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the construction and sale or lease of Condominiums within the Project; *provided, however*, that such easements and rights shall terminate upon the sale of all Condominiums within the Project to Retail Purchasers and any sales complex installed on the Property has been removed.

(c) **Ventilation and Other Systems**. There is hereby reserved to Declarant, together with the right to grant and transfer same, easements and rights in, on, over, under, along and across all portions of the Common Area for the installation, maintenance, repair and replacement of ventilation and/or other systems and related Improvements, including, without limitation, electrical, communication and ventilation improvements, necessary or appropriate for the operation of permitted businesses within the Commercial Units.

8.1.3 **Certain Easements for Owners.**

(a) **Rights and Duties; Utilities and Television**. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed within the Project, the Owners of Units which are served by said connections, lines or facilities shall have the right, and there are hereby reserved to Declarant and all other Owners, together with the right to grant and transfer same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such connections, lines or facilities which service such Units, and to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary, provided that such entering Owner or utility company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon.

(b) **Owners' Easements in Common Area.**

(i) Subject to the provisions of this Declaration (including, without limitation, Section 2.5 of this Declaration), every Owner (including the Commercial Owners) shall have, for himself, his or her Family, and his or her tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the General Common Area and such easements shall be appurtenant to and shall pass with title to every Condominium in the Project.

(ii) Subject to the provisions of this Declaration (including, without limitation, Section 2.5 of this Declaration), every Residential Owner shall have for himself, his or her Family, his or her tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Residential Common Area, and such easements shall be appurtenant to and shall pass with title to every Residential Condominium in the Project.

(c) **Ingress, Egress and Recreational Rights**. There are hereby reserved to Declarant and to all other Owners, together with the right to grant and transfer same, easements and rights for ingress, egress, use, enjoyment and general recreational purposes over and upon the General Common Area. Such easements and rights shall be subject to the rights of the Association as set forth in this Declaration.

(d) **Guest Parking**. An easement is hereby granted to each Residential Owner in common with all other Owners of Residential Condominiums on a non-exclusive basis to use the above ground parking areas designated in the Condominium Plan. An easement is hereby granted to each Restaurant Owner (for their benefit and for the benefit of Restaurant Users) on a non-exclusive basis to use the above ground parking areas designated in the Condominium Plan.

(e) **Commercial Easements**. An easement is hereby granted to each Commercial Owner (for their benefit and for the benefit of the Commercial Users) over and across all portions of the Common Area for the installation, maintenance, repair and replacement of ventilation and/or other systems and related Improvements, including, without limitation, electrical, communication and ventilation improvements, necessary or appropriate for the operation of permitted businesses within the Commercial Units (including, without limitation, antennas and related equipment permitted pursuant to Section 11.7 of this Declaration).

(f) **Hotel Owner's and Restaurant Owner's Right of Entry in Pool Area and Residential Hallways.** The Commercial Owners shall have a limited non-exclusive easement of access and ingress over and in the Residential Common Area as needed to serve food and beverages to Owners and Hotel Guests at the pool area or in Units, to provide any other amenities described herein, and as may otherwise be needed to effectively operate their businesses. Such easements shall pass with the title to every Commercial Condominium in the Project. Notwithstanding the foregoing, the easement granted to the Commercial Owners over the Residential Common Area shall not include any right to utilize any Exclusive Use Common Area assigned to any other Owner, and does not obligate any Commercial Owner to provide amenities and/or services to Owners and Hotel Guests in the pool area or Units.

(g) **Restaurant Owner's Right to Use Wedding Area.** The Restaurant Owner may use that certain portion of the Common Area designated on the Condominium Plan as "Wedding Area" during certain hours approved by the Association for the purpose of hosting special events (such as a wedding, birthday party, *etc.*). In the event the Restaurant Owner uses the Wedding Area to hold a special event, the Wedding Area shall be exclusive to the Restaurant Owner during such event (*i.e.*, only those persons with the permission of Restaurant Owner may enter the Wedding Area), the Restaurant Owner shall be obligated to clean such area following Restaurant Owner's hosting of the event, and the Restaurant Owner agrees to indemnify the Association against all claims, causes of actions, and liabilities (including reasonable attorneys' fees) which may arise in connection with its use of the Wedding Area.

(h) **Ingress and Egress Rights Over Portion of Hotel Unit**. There are hereby reserved to all Owners other than the Hotel Owner, together with the right to transfer same, easements and rights for ingress and egress over and upon that portion of the Hotel Unit designated as "Lobby" in the Condominium Plan. Notwithstanding the foregoing, such easements rights over the "Lobby" shall only be available during such time as the Hotel Operator and/or Hotel Unit Owner permits the same to be used by Hotel Guests.

(i) **Residential Owners' Easements Pass to Hotel Guests**. For so long as they are residing in the Project, each Hotel Guest and any other tenant pursuant to a lease authorized hereunder shall enjoy the same easements rights reserved herein for the Residential Owner of the Unit in which such Hotel Guest or tenant resides.

8.1.4 **Certain Easements for Association.**

(a) **Common Area Maintenance**. The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in this Declaration. The Association's obligations to maintain the Common Area shall commence on the date Regular Assessments commence on Condominiums within the Property. Until commencement of Regular Assessments on Condominiums within the Property, the Common Area shall be maintained by Declarant.

(b) **Rights and Duties; Utilities and Television**. Whenever sanitary sewer house connections, water house connections, electricity, gas, telephone and television lines or drainage facilities are installed within the Project, and said connections, lines or facilities serve recreational or other facilities within the Common Area which are used in common by Members, the Association shall have the right, and there are hereby reserved to the Association, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such connections, lines or facilities which service such commonly used facilities, and to enter upon all portions of the Project, or to have utility companies enter upon all portions of the Project, including Units, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary, provided the Association or utility company shall promptly repair all damage, including damage to any Unit, caused by such entry as promptly as possible after completion of work thereon.

8.1.5 **Encroachment**. There are hereby reserved to Declarant and all other Owners, together with the right to grant and transfer same, the reciprocal rights and easements for the purposes of encroachments resulting from the construction, reconstruction, repair, shifting, settlement or other movement of any Improvements upon the dominant tenement, and for the maintenance of such encroachments.

8.1.6 **Exclusive Use Common Area**. Declarant expressly reserves for the benefit of certain Owners exclusive easements over the Property for use of the Exclusive Use Common Area.

8.1.7 **Utility Company Easements**. Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and disposal of the Property. Such right of Declarant shall expire upon the earlier to occur of (i) Close of Escrow for the sale of all Condominiums by Declarant, or (ii) upon expiration of seven (7) years from the date of issuance by the DRE of the most recent Final Subdivision Public Report.

8.1.8 **Coastal Access Parking for the General Public**. Declarant expressly reserves for the benefit of members of the general public, a non-exclusive revocable license over and upon the parking lot designated in the Condominium Plan for purposes of utilizing temporary short-term day parking in those certain fifteen (15) above ground parking spaces designated on the Condominium Plan as "Public Coastal Access Parking Spaces." Subject to availability, the temporary short-term parking spaces may only be used by members of the general public intending solely to access the coastal area during day-light hours. Only Authorized Vehicles may be parked in the Public Coastal Access Parking Spaces. Declarant and the Association expressly reserve the right to redesignate such parking spaces to other areas within the Project, to impose reasonable restrictions on the Authorized Vehicles which park in the Public Coastal Access Parking Spaces and their operators/passengers, and to revoke the license of certain members of the public who violate any reasonable restrictions imposed by the Declarant, the Association or this Declaration.

8.2 **Rights of Entry**. The Board shall have a limited right of entry in and upon the Common Area (including Exclusive Use Common Area) and the interior of all Units for the purpose of inspecting the Project, and taking whatever corrective action may be deemed necessary or proper by the Board, consistent with the provisions of this Declaration. However, such entry upon the interior of a Unit shall be made, except to effect emergency repairs or address other Emergency Situations, only after three (3) days prior written notice to the Owner of such Unit. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners. Nothing in this Article shall in any manner limit the right of the Owner to exclusive occupancy and control over the interior of his or her Unit. However, an Owner shall permit a right of entry to the Board or any other person authorized by the Board, as reasonably necessary, such as in case of any Emergency Situation originating in or threatening his or her Unit, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Board or by any person authorized by the Board shall be repaired by the Association as a Common Expense of the Association. Furthermore, an Owner shall permit other Owners, or their representatives, to enter his or her Unit for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Unit, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Owner whose Unit is to be entered, and provided further that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an Emergency Situation, such right of entry shall be immediate. Any damage caused to a Unit by such entry by an Owner or its representative shall be repaired by such Owner. Upon receipt of reasonable notice from the Association (which shall in no event be less than fifteen (15) days nor more than thirty (30) days) each Owner shall vacate his or her Unit in order to accommodate efforts by the Association to perform any other maintenance or repairs pursuant to the Declaration. The Board shall have the right of entry to the Units and the right to remove Owners from their Units, as necessary, to accomplish its duties as provided herein. The cost of performing any such maintenance or repairs shall be a Common Expense of the Association; *provided, however*, each Owner shall bear his or her own costs of temporary relocation.

8.3 **Easements for Construction, Sales, Resales, Customer Service and Related Purposes**. Declarant, on behalf of itself, its agents, employees, contractors, subcontractors, invitees, successors, assigns and other authorized personnel, reserves onto itself for a period of time extending until the date on which one hundred percent (100%) of all Residential Condominiums which may be constructed on the Property are sold to Retail Purchasers, a non-exclusive easement in, on, over, under, along, and across, and through each and every part of the Common Area together with the right to transfer and grant the same without the consent of any other person or entity for the following purposes:

(a) Completion of original development of all portions of the Property including, without limitation, the Condominiums;

(b) Marketing, and selling Condominiums;

(c) Customer relations and providing post-sale customer service;

(d) Leasing and reselling of Condominiums and

(e) Redesigning and/or contracting any portion of the Property; *provided, however*, Declarant's exercise of its redesign right shall be aesthetically consistent with the then existing theme of the Project.

In connection with each of the foregoing purposes Declarant shall have the right: (i) to perform any and all architectural, engineering, construction, excavation, blasting, landscaping or related work and activities; (ii) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) to display signs and erect, maintain and operate, for sales, resales and administrative purposes, model Condominiums and a fully staffed customer relations, services and sales and/or resales office complex within the Property; (iv) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to uncompleted Improvements; and (v) to take such other action consistent with such easements. No Owner (other than Declarant) shall enter any construction area within the Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

8.4 **Use by Declarant**. Declarant and its agents and representatives shall have a non-exclusive easement for use of the Common Area and the facilities thereof for display and exhibit purposes in connection with the sale and resale of Condominiums within the Property, which easement Declarant expressly reserves until escrows have closed on one hundred percent (100%) of the Condominiums. Declarant shall have an easement over all of the Common Area for ingress, egress and parking for Declarant, its agents, employees and prospective buyers, so long as Declarant shall own a portion of the Property. No such use by Declarant shall unreasonably restrict the Owners in their use and enjoyment of the Common Area or the facilities thereon.

8.5 **Amendment to Eliminate Easements**. Until the sale of all Residential Condominiums in the Project to Retail Purchasers, (i) this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempts to do so shall have no effect, and (ii) any attempt to modify or eliminate this Article or any provision hereof shall likewise require the prior written approval of Declarant. No easements granted to or reserved for the benefit of the Commercial Owners or the Commercial Condominiums may be amended or modified without the written approval of all of the Commercial Owners.

8.6 **Restaurant Signage Easement**. There is hereby reserved to the Restaurant Owner, an easement over the Restaurant Signage Sites (and any other portions of the Project necessary to access the Restaurant Signage Sites and exercise Restaurant Owner's rights hereunder with respect to the Restaurant Signage Sites), for the purpose of accommodating the installation, use, maintenance and periodic replacement of any signage located on the Restaurant Signage Sites, subject to any applicable rules or conditions imposed by the City (the "**Restaurant Signage Easement**"). Notwithstanding the foregoing, the Restaurant Signage Easement shall include the obligation to maintain the Restaurant Signage Sites in a good, clean and safe condition. Neither the Association nor any Owner shall take any action which will interfere with Restaurant Owner's rights set forth herein (including, without limitation, petitioning the City to terminate any rights to use the Restaurant Signage Sites, commencing litigation to terminate or limit use of the Restaurant Signage Sites blocking access to the Restaurant Signage Sites, *etc.*). The Restaurant Signage Site and the easement described herein shall not be subject to any Assessment, levy or charge imposed by the Association. In the event any such action is taken, Restaurant Owner shall be entitled to all rights and remedies available at law or in equity. The foregoing easement shall be broadly interpreted to allow Restaurant Owner (and/or its successors or assigns) with all rights to utilize the Restaurant Signage Easement in perpetuity.

8.7 **Hotel Signage Easement**. There is hereby reserved to Hotel Owner together with the right to grant and transfer same, an easement over the Hotel Signage Sites (and any other portions of the Project necessary to access the Hotel Signage Sites and exercise Hotel Owner's rights hereunder with respect to the Hotel Signage Sites), for the purpose of accommodating the installation, use maintenance and periodic replacement of any signage located on the Hotel Signage Sites, subject to any applicable rules or conditions imposed by the City (the "**Hotel Signage Easement**"). Notwithstanding the foregoing, the Hotel Signage Easement shall include the obligation to maintain the Hotel Signage Site in a good, clean and safe condition. Neither the Association nor any Owner shall take any action which will interfere with Hotel Owner's rights set forth herein (including, without limitation, petitioning the City to terminate any rights to use the Hotel Signage Sites, commencing litigation to terminate or limit use of the Hotel Signage Sites, blocking access to the Hotel Signage Sites, *etc.*). The Hotel Signage Sites and the easement described herein shall not be subject to any Assessment, levy or charge imposed by the Association. In the event any such action is taken, Hotel Owner shall be entitled to all rights and remedies available at law or in equity. The foregoing easement shall be broadly interpreted to allow Hotel Owner (and/or its successors or assigns) with all rights to utilize the Hotel Signage Easement in perpetuity.

ARTICLE IX.
DECLARANT'S RIGHTS AND RESERVATIONS

9.1 **General**. Subject to applicable laws and regulations, nothing in the Restrictions shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property, record any tract map(s) or condominium plan(s) for all or a portion of the Property owned by Declarant or the Association, or to complete Improvements to and on the Common Area or any portion of the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as Declarant owns any portion of the Property. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices anywhere on the Property as may be necessary for the conduct of its business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Each Owner, by accepting a deed to a Condominium, hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Condominium in the Project by a purchaser from Declarant to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant may use any Condominiums owned by Declarant as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed on any portion of the Property by Declarant. The rights of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of a deed to such Owner's Unit, an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article and the Restrictions. Declarant and its prospective purchasers of Condominiums shall be entitled to the nonexclusive use of the Common Area and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers and to dispose of the Property as provided herein. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor.

9.2 **Right of Declarant to Redesign Project**.

9.2.1 General. There is no guarantee that the Project will be developed as originally planned. Subject to the restrictions and limitations set forth in this Section, Declarant reserves the right, in its sole discretion, from time to time, within a period of ten (10) years from the date of the recording of this Declaration, or at any time or at different times within such ten (10) year period, to redesign the Property or any portion or aspect thereof, including, but not limited to, any Improvement constructed or proposed to be constructed on the Property and, in connection with such redesign, to effect the following changes in the Project:

(a) Alter the vertical and/or horizontal boundaries, of any Improvement.

(b) Alter the size, shape, configuration, floor plan and/or location of any Units.

(c) Create new Units or eliminate or combine existing Units.

(d) Change the configuration of any Improvement.

(e) Adjust the configuration of the Common Area and the Exclusive Use Common Area boundary lines.

(f) Effect deviations from the Condominium Plan which result during the actual construction of the Improvement.

9.2.2 General Restrictions on Redesign. The rights of Declarant set forth in Section 9.2.1 above are hereby made subject to the following restrictions and limitations:

(a) In no event shall the Project, when completed, consist of more than seventy (70) Residential Units and two (2) Commercial Units.

(b) The redesign of any portion of the Property shall in no event physically modify, affect, or change any Units, which as of the date of such redesign, are the subject of an agreement of sale or are owned by an Owner other than Declarant, unless the purchaser or Owner of such a Unit shall consent to such redesign in writing.

9.2.3 Amendment to Condominium Plan. In the event that a redesign of all or any portion of the Property in accordance with the provisions of this Article affects any Units in the Project so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval and Record or cause to be Recorded an amendment to the Condominium Plan. The amendment to the Condominium Plan shall, when Recorded, have the effect of (a) relocating the Common Area and any Exclusive Use Common Area therein and each Unit to the extent set forth on the amendment to the Condominium Plan, (b) vesting in each Owner (including Declarant with respect to any unsold Units) an undivided interest in the Lot 1 Common Element as depicted on the amendment to the Condominium Plan,

(c) divesting each Owner (except Declarant) of all right, title and interest to any Unit, other than each Owner's Unit, depicted on the amendment to the Condominium Plan, (d) vesting in each holder of a Mortgage an undivided interest (to the extent of the interest in the Lot 1 Common Element owned by the Owner of the Unit) which is the subject of such Mortgage in the Common Area as depicted on the amendment to the Condominium Plan and (e) divesting each holder of a Mortgage of all right, title and interest to each Condominium (other than the Owner's Condominium which is the subject of such Mortgage) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any such Mortgage with respect to any other matters affecting title to the Condominium which is the subject thereof.

9.2.4 Power of Attorney. Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed, for himself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of ten (10) years from the date of the recording of this Declaration, Declarant as his or her attorney-in-fact and thereby to have conveyed a power of attorney coupled with an interest ("**Power of Attorney**") to Declarant as his or her attorney-in-fact to effect the redesign of all or any portion of the Property in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval and File or Record or cause to be Filed or Recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California as in effect on the date of Recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, and acknowledge and File or cause to be Filed for approval and Record or cause to be Recorded any amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Project as actually built, which may be required or permitted by the laws of the City, the County or the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and File or cause to be Filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the City, the County, or the State of California as in effect on the date of Recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of Recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, File or cause to be Filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the Recording of this Declaration and as hereafter enacted or amended by any federal, state and local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and Record or cause to be Recorded any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any Units, whether constructed or to be constructed, in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

9.2.5 <u>Indemnification of Owners on Exercise of Power of Attorney</u>. Declarant shall indemnify and hold each Owner harmless from all liabilities, including reasonable attorneys' fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in Section 9.2.4 hereof.

9.2.6 Mortgage Interests to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in Section 9.2.4 hereof.

9.2.7 Power of Attorney Binding on Successors in Interest. Each and all Owners and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his or her attorney in fact to carry out the powers described in Section 9.2.4 hereof, and such Power of Attorney shall be deemed to continue to be coupled with an interest.

ARTICLE X.
RESIDENTIAL CONDOMINIUM USE RESTRICTIONS

All of the Residential Condominiums shall be held, used and enjoyed subject to the following limitations and restrictions and the exemptions of Declarant set forth in this Declaration:

10.1 **Residential Use**. Subject to Section 10.2 below, each Condominium, other than any Commercial Condominium, shall be used only for residential purposes; provided, however, Residential Owners shall be permitted to maintain a "home office" within the Residential Unit. Notwithstanding the foregoing, the Hotel Owner and Hotel Operator reserve the right to use any Residential Condominium for any commercial purpose related to the operation a hotel (*e.g.*, spa, conference or meeting facilities, sales and marketing, internet access, *etc.*).

10.2 **Leasing of Units**. A Residential Owner may rent his or her Residential Unit provided that the Residential Unit is rented (1) through the Hotel Leasing Program, or (2) pursuant to a lease or rental agreement which is (a) in writing, (b) for a term of at least sixty (60) days, and (c) in compliance with Article XV and all other provisions of this Declaration.

10.3 **Parking and Vehicular Restrictions**.

10.3.1 Authorized Vehicles. The following vehicles are authorized within the Residential Garage: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "**Authorized Vehicles**").

10.3.2 Prohibited Vehicles. Unless specifically permitted in writing by the Board for certain temporary occasions, 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.*), vehicles which exceed the posted height limitation of the Residential Garage, 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 the Property or any other Common Area parking area unless specifically authorized by the Board; *provided, however*, the foregoing shall not apply to temporary parking of Prohibited Vehicles making deliveries to the Commercial Units.

10.3.3 Number of Parking Spaces/Parking Areas. Each Residential Condominium which consists of a one-bedroom unit shall include the right to park one Authorized Vehicle in the Residential Garage located under such Residential Condominium's Building. Each Residential Condominium which consists of a two-bedroom Unit shall include the right to park two Authorized Vehicles in tandem parking spaces in the Residential Garage located under such Residential Condominium's Building. Such parking space(s) shall be assigned in the sole discretion of the Association, and the Association has the right to re-assign or re-designate parking spaces among the Residential Owners as the Association deems necessary or appropriate, including, without limitation, to meet the needs of Owners with disabilities.

10.3.4 General Restrictions. The following general parking and vehicle restrictions shall also be observed:

(a) No repair, maintenance or restoration of any vehicle shall be conducted on the Property.

(b) No vehicles may be parked or stored in any Residential Parking Space unless it is operable and in good condition and repair.

(c) Non-operable vehicles (including due to flat tires) may be towed at the Owner's expense (assessable as a Reimbursement Assessment) after 48-hours notice.

(d) No Owner, nor any member of his or her Family, nor his or her tenants, guests, invitees, agents, licensees, servants or employees shall park or cause to be parked any vehicle in such a manner as to impede or prevent ready access to (a) any entrance or exit, (b) any of the parking or storage areas for the Project, or (c) any other vehicle or parking space.

(e) No vehicle may remain in any access driveway of the Project for more than ten (10) minutes.

(f) Vehicles may not be washed on the Property except as provided for by the Board in the Association Rules.

(g) No Residential Parking Space may be severed from any Unit and no Residential Parking Space may be rented to or leased to a non-Owner except in connection with the lease of the Unit.

(h) Under no circumstances may explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, *etc.*, be stored in the garage of, or any other parking area located on, the Property.

(i) Owners shall keep all parking spaces free of oil, brake fluid, power steering fluid or other fluid leaks, at all times. If any Owner fails to so maintain any parking space, the Board shall have the right, without obligation, to perform any necessary cleaning of such Parking Space, and/or tow the offending Owner's vehicle which is leaking such fluids, after providing sufficient notice to such Owner to repair such leak, and thereafter assess such Owner the cost of such clean up and/or towing, which Assessment shall be deemed a Reimbursement Assessment in accordance with the terms of this Declaration.

(j) For any violation of these restrictions, or any other restrictions or regulations related to vehicles or parking as may be adopted by the Board from time to time, the offending vehicle may be towed at the direction of the Association at the offending Owner's expense, the cost of which shall be borne by such Owner and assessed against same as a Reimbursement Assessment.

(k) Neither the Association nor any of its officers, directors, agents or employees shall be liable to any Owner, or to any member of his or her Family, his or her guests, servants, employees or invitees, for any theft of, or injury to, any vehicle on the Project. Each Owner shall indemnify, defend, and hold harmless the Association and the Association's officers, directors, agents, employees, and representatives from any injury, damages, claims, liabilities, costs or expenses caused by, arising out of, or related to the provisions of this Section, or any offending vehicle.

10.3.5 Garage. The garage gates to any garage on the Property shall not be permitted to remain open except for temporary purposes (including as reasonably required for ingress to and egress from the interior of the garage(s)). The Board may adopt additional Association Rules for the regulation of the opening of the garage door(s), including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Remedial Assessments.

10.3.6 Guest Parking. Residential Guests and Commercial Users shall be required to park in the Guest Parking Areas and may not park in the Residential Garage. Any violation of the applicable rules may result in termination of guest parking privileges for a particular Unit. There is absolutely no assurance that the Guest Parking Areas will accommodate all Residential Guests and Commercial Users, and to the extent parking is insufficient to accommodate both, parking to accommodate Commercial Users shall be prioritized. Notwithstanding anything contained herein, Hotel Guests may park in the Residential Parking Spaces assigned to the Unit in which they are renting.

10.4 **Additional Regulations/Enforcement**. Provided that same does not conflict with any parking requirements mandated by applicable law, the Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the Residential Parking Spaces. The Board shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any of the Property pursuant to California Vehicle Code Section 22658.2 or other applicable statute. If the Board fails to enforce any of the parking or vehicle use regulations, the City or County may, but need not, enforce such regulations in accordance with state and local laws and ordinances.

10.5 **Nuisances**. No noxious or offensive activities shall be carried on upon the Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residential Condominium and its contents, shall be placed or used in any such Residential Condominium. Noisy or smoky vehicles, large power equipment and large power tools, off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Project, and objects which create or emit loud noises or noxious odors shall not be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board shall have the right to determine in its sole and absolute discretion if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept upon the Property which may increase the rate of insurance on Units or on the Property, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law, ordinance, statute, rule, or regulation of any City, County, state or federal body. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Residential Condominium. 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 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.

10.6 **Signs**. Except as provided in California Civil Code § 1353.6, no sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property (other than any signage which may, from time to time, be installed on the Restaurant Signage Site or Hotel Signage Site or any signage installed on or adjacent to the Commercial Units) or on any public street abutting or visible from the Property, or shown or displayed from any Residential Condominium, without the prior written consent of the Architectural Committee; provided, however, the restrictions of this Section shall not apply to any sign or notice of customary and reasonable dimension which states that the Residential Condominium is for rent or sale, so long as it is consistent with the standards promulgated by the Architectural Committee in accordance with Article VI hereof. Such sign or notice may be placed within a Unit, and may also be placed upon the Common Area with the prior written approval of the Architectural Committee; provided, however, the location of such sign or notice on the Common Area shall be within an area specifically established by the Architectural Committee for such purpose. This Section shall not apply to any signs used by Declarant or its agents in connection with the sale of Condominiums or the construction or alteration of the Units or Common Area, traffic and visitor parking signs installed by Declarant, and traffic and parking control signs installed with the consent of the Board. 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 or County, nor prohibit display of signs required to be permitted by applicable law.

10.7 **Antennae**. No radio station or shortwave operators of any kind shall operate from any Unit or any other portion of the Property unless approved by the Board. Satellite dishes may not be erected on the Property. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, earth receiving station, other antenna, or any exterior wiring, of any type, shall be erected or maintained anywhere in the Property unless approved by the Architectural Committee or the Board. Any television antenna, other similar Improvement installed by an Owner shall be installed in accordance with the Architectural Rules and only in the specific areas of the Property designated by the Declarant or the Board for installation of such devices. Under no circumstances shall any Residential Owner drill through, or install any Improvements upon, any Common Area with respect to the installation or maintenance of any antenna or wiring, unless approved by the Board. Notwithstanding anything herein to the contrary, in the event a master satellite system has been installed in the Project, each Owner that desires to obtain satellite television services shall be required to utilize such master system and shall be prohibited from installing an individual antenna serving such Owner's Unit. Each Owner acknowledges that such master antenna system provides adequate access to such satellite services and the airwaves. In any event, any television antenna, satellite dish, or other similar Improvement shall be installed in accordance with the Architectural Rules. This Section is subject to Section 1376 of the California Civil Code and any applicable laws or regulations.

10.8 **Outside and Inside Installations**. No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on or from any Balcony or Patio, excepting antennae installed by Declarant as a part of the initial construction of the Property, if any, and except as may be installed by, or with the prior consent of the Architectural Committee. No Balcony or Patio covers, wiring, or installation of air conditioning, water softeners, or other machines shall be installed (with the exception of those items installed during the original construction of the Project) unless the prior written approval of the Architectural Committee is secured. Furniture and plants to be placed on any Balcony or Patio must be consistent with the approved lists of furniture and plants provided by the Architectural Committee (which lists may be revised from time to time), and such approved furniture and plants shall be maintained pursuant to the Association Rules. Absolutely no wind chimes, windmills, bird houses or feeders, laundry or clothes, flags or signage may be erected or maintained on any Balcony or Patio. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Unit or in, on or to the Common Area which will or may tend to impair the structural integrity of any Improvement in the Project or which would structurally alter any such Improvement except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the Project or otherwise constitute a nuisance. All air conditioning equipment shall comply with any noise guidelines set forth in any Association Rules and/or Architectural Rules.

10.8.1 No roof mounted air conditioning or heating equipment, vents or ducts, shall be installed unless (1) approved by the Architectural Committee and (2) screened from view in a manner approved by the Community Development Director of the City of Pismo Beach.

10.9 **Mechanics' Liens**. No Owner shall cause or permit any mechanics' lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanics' lien, the Board may discharge the lien and charge the Owner a Reimbursement Assessment for such cost of discharge.

10.10 **Animal Regulations**. No livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept in any Residential Condominium except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Residential Condominium provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Residential Condominium; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner or by members of his or her Family, his or her tenants or his or her guests. It shall be the duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Property or on any public street abutting or visible from the Property. Notwithstanding the foregoing, the Board shall have the right to restrict the right to maintain certain (1) aggressive breeds of animals (e.g., pit bulls, presa canario, rottweiler), (2) large animals, and (3) noisy animals, if the Board deems such animals to pose a risk or nuisance to other residents and/or increase the rate of insurance applicable to the Project.

10.11 **Rubbish Removal**. Trash, garbage, other waste and recyclables shall be regularly disposed of by residents of the Project, and only by depositing the same into trash and recyclables receptacles designated for such use by the Board. Trash and recyclables receptacles designated by the Board shall be maintained in a sanitary condition and located in enclosures which are functionally located as an ascetic extension of the Buildings and with a minimum wall height of five feet (5'). No portion of the Property shall be used for the storage of building materials, refuse or any other materials, except as may periodically be approved by the Board in connection with Improvement work approved by the Architectural Committee.

10.12 **Exterior Fires; Barbecues**. No exterior fires shall be permitted within the Project. Barbecues not a part of built-in kitchen facilities and/or equipment of Units may not be used within the Project, except in that certain area of the Project designated on the

Condominium Plan as "BBQ Area." The Board may impose restrictions on Owners' use of the BBQ Area.

10.13 **Further Subdivision**. Except as otherwise provided herein, no Owner shall physically or legally subdivide his or her Unit in any manner, including, without limitation, any division of his or her Unit or his or her Condominium into time-share estates or time-share uses; provided, however, this provision shall not be construed to limit the right of an Owner (1) to rent or lease all of his or her Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration; (2) to sell his or her Condominium; or (3) to transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the lessee of the Unit to comply with the terms of this Declaration, the Bylaws, or the Association Rules shall constitute a default under the lease or rental agreement.

10.14 **Noise Reduction**. Acoustical privacy is in the mutual interest and benefit of all Owners, lessees and other occupants of the Property. It is recognized, however, that total isolation from an adjacent Unit in a manner comparable to a single family Residential Condominium is difficult if not impossible to attain. There will usually be some awareness of one's neighbors. The Architectural Committee and/or the Association shall have the right to take noise considerations into account in reviewing and approving any submittals, and shall have the further right to assemble noise guidelines and restrictions to be adhered to by the Owners (the "**Noise Guidelines**"), including, without limitation, guidelines and restrictions with respect to the selection and installation of flooring materials in any Units, the attachment to ceilings, walls or cabinets of stereo equipment and/or speakers, and/or the installation and/or operation of pianos and appliances. The Architectural Committee and/or the Board shall have the right to request that any Owner desiring to install any such Improvements or equipment possible or likely to generate inappropriate noise submit the results of a noise study prepared by a qualified consultant reasonably acceptable to the Architectural Committee or the Board, as applicable, and/or submit a written description to the Architectural Committee of the measures that the Owner intends to take to ensure that said equipment or instrument shall not disturb the Owners, lessees and other occupants of the Property (the "**Noise Reduction Measures**"). It shall remain the responsibility of Owners to abide by the sound and noise reduction requirements set forth in this Declaration and/or otherwise established by the Association and/or the Architectural Committee.

10.15 **Drainage**. There shall be no interference with or alteration of the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of a Condominium in the Property, or that which is shown on any plans approved by the Architectural Committee.

10.16 **Rights of Handicapped**. Subject to the express terms and provisions of this Declaration, each Owner shall have the right to modify such Owner's Residential Condominium and the route over the Common Area leading to the front door of such Owner's Residential Condominium, at such Owner's sole cost and expense, in order to facilitate access to such Owner's Residential Condominium by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons. Notwithstanding the foregoing, (1) any modifications to be made to a Unit or the Common Area pursuant to this Section shall require the review and pre-approval of the Architectural Committee, not be denied without good cause, and (2) each Owner agrees to remove, at his or her own expense, any such modifications at such time that the person(s) requiring such modifications no longer reside in the Project.

10.17 **Window Coverings**. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee. Only the following window covers visible from the exterior may be installed: curtains, drapes, shades, shutters and blinds (including miniblinds) on the approved lists of the Architectural Committee. All such window covers shall be maintained in a neat and attractive condition and be of a color (visible from the exterior of the Project) approved by the Architectural Committee. In the event the Architectural Committee adopts additional rules applicable to window covers, the installation and maintenance of window covers shall also comply therewith. No aluminum foil, flags, signage, or similar material may be placed on any windows within a Unit, or otherwise visible within the Unit from areas outside of such Unit.

10.18 **Lobby Areas**. Lobby areas (other than the "Lobby" designated on the Condominium Plan and which is a part of the Hotel Unit) and hallways shall not be Exclusive Use Common Area appurtenant to any Unit. Lobby areas are intended to serve as access ways only and, except as otherwise permitted by the Board, nothing shall be kept or stored therein; provided, however, the right to keep or store anything in a lobby area shall, in any event, comply with all applicable requirements of the City. No additional locks shall be placed upon the door of any lobby area.

10.19 **Keys to Units**. Any Manager retained by the Board shall, if required by the Board, retain a key to each Unit or retain a pass key to all Units. No Owner shall install any additional lock in, or alter any lock in, any door to his Unit or in any other portion of the Project without the consent of the Board; provided, however, the Board may condition the granting of such consent to such Owner upon receipt by it of a key to each new or altered lock with respect to which such Owner desires the consent of the Board.

10.20 **Water Beds**. Water beds may not be kept or used within the Project.

10.21 **Structural Alteration and Integrity**. Under no circumstances shall any Owner alter, impair, modify, or penetrate any structural Improvement within the Project for any reason whatsoever. No interior or exterior structural changes of any kind shall be constructed, erected or made within the Project other than those approved by the Architectural Committee. No partition walls shall be installed, altered or removed without the approval of the Architectural Committee. Nothing shall be hung from any ceiling, bearing wall or partition walls bounding or within any Unit without the approval of the Architectural Committee; provided, however, the hanging from ceilings, bearing walls and partition walls bounding or within Units of light fixtures, plants, paintings, mirrors and other customary fixtures and decorating items shall be permitted so long as the same do not impair the structural integrity or acoustical soundness of any such ceiling, bearing wall or partition wall. Nothing shall be installed, kept or maintained within any Unit which might damage or impair the structural integrity of the Project.

10.22 **Association Rules**. In addition to any Association Rules adopted in accordance with Section 4.8 above, but otherwise in accordance with such Section 4.8, the Board may adopt rules applicable to each and every provision of this Article entitled "Residential Condominium and Use Restrictions" and their enforcement, including the assessment of charges to owners and occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be Remedial Assessments.

10.23 **Exemptions**. Any provision of this Declaration to the contrary notwithstanding, this Article X shall not apply to Declarant or any Commercial Owner or Commercial Unit.

ARTICLE XI.
COMMERCIAL USE RIGHTS AND RESTRICTIONS

11.1 **Use of Hotel Unit and Restaurant Unit**. Subject to the Conditions of Approval, (i) the Hotel Unit may be used solely for purposes of operating the Hotel Leasing Program and providing amenities to Residential Owners and Hotel Guests in connection with the same, and any other lawful purpose; and (ii) the Restaurant Unit may be used solely for purposes of operating a restaurant and cocktail lounge, and any other lawful purpose. Each Owner, by acceptance of a deed to a Unit, is deemed to have consented to the foregoing use of the Hotel Unit and Restaurant Unit. Notwithstanding the above, the Hotel Unit and Restaurant Unit shall not be used in all or in part as a dry cleaning facility (with cleaning equipment located on-site), adult bookstore, pool or billiard hall, gaming casino, video game parlor, movie theatre, any operation which would permit the introduction of hazardous materials onto the Property or any operation which in any way, is conducted for any manufacturing or industrial purpose or for the breeding or keeping of any animals (including as a pet store).

11.2 **Rental**. The Owners of the Commercial Units may lease or rent all or part of such Commercials Unit without the necessity of notice to, or approval of, the Board.

11.3 **Signs**. The Owners of the Commercial Units shall be permitted to install any signs and displays on the Hotel Signage Sites and Restaurant Signage Sites, as permitted by law.

11.4 **Offensive Activities**. No noxious or offensive activity shall be carried on in the Commercial Units, nor shall anything be done therein which may be or become a nuisance or annoyance to the neighborhood or which unreasonably interferes with the use and enjoyment of the Residential Owners; *provided, however*, this provision shall be narrowly interpreted so as not to unreasonably interfere with the operation of any business not expressly prohibited hereby. In that respect, each Residential Owner, by acceptance of a deed to such Residential Unit, recognizes and understands that the Commercial Units shall include a restaurant (which may include bar areas) and/or other businesses which may be open (including for receipt of deliveries) early in the morning and late into the evening, which businesses will likely generate noise, patron and delivery traffic, trash pick-up, smoke and odors. Any activities conducted in a Commercial Unit in accordance with the Article cannot be deemed to prevent the use and enjoyment of the Property by the Residential Owners.

11.5 **Delivery Hours; Restrictions**. The Owner of the Commercial Unit (or any tenants thereof) shall use reasonable efforts to limit deliveries to such Commercial Units during normal business hours, and shall take reasonable steps to assure that delivery vehicles shall not remain parked outside of the Commercial Unit longer than necessary and so as not to unreasonably interfere with traffic flow in or around the Project. Notwithstanding the foregoing, the Owners of the Commercial Units may provide amenities, such as room and concierge services, beyond normal business hours.

11.6 **Redesign/Split of Commercial Units**. Each Commercial Owner may, with the consent of all mortgagees of record of any interest in such Commercial Owner's Commercial Units, from time to time subdivide such Commercial Units (the "**Original Unit(s)**") into any number of separate commercial units (the "**Resulting Units**") and may create walls, partitions, doors, foyers, corridors or vestibules between the Resulting Units upon the following terms and conditions:

(a) the structural integrity of the common elements and all other Units in the Project shall not be thereby adversely affected;

(b) the Owner of the Original Unit shall Record (without the necessity of the consent or joinder of the Association, the Board, any other Owner or any other person), and promptly deliver to the Board of Directors a true and correct filed copy of, an amendment to this Declaration which contains the following:

(i) A description of the layout, location, dimensions and unit number of each of the Resulting Units, and

(ii) The percentage of the voting rights and assessment obligations applicable to each Resulting Unit (the sum of which common interests shall equal the voting rights and assessment obligations applicable to the Original Unit).

(c) upon the completion of any construction relating to the subdivision of the Original Unit, the Owner of the Original Unit shall Record and promptly deliver to the Board of Directors a true and correct filed copy of, a statement of a registered architect or engineer, certifying that the amendment described above accurately depicts the Resulting Units, as built;

(d) prior to commencing any construction relating to the subdivision of the Original Unit, the Commercial Owner shall deliver to the Board a certificate that the proposed work will not adversely affect the structural integrity of the common elements or any other Units in the Project; and

(e) the Resulting Units shall not be assigned unit numbers which are the same as the unit number of any other Unit in the Project.

Except as otherwise provided herein, such subdivision of the Original Unit shall not require the consent or joinder of the Board, the Association, any Owner, or any other person.

11.7 **Antennae**. Notwithstanding any other provisions herein, and subject to Section 1376 of the California Civil Code and any other applicable laws or regulations, the Owners of the Commercial Units shall have the right to install a satellite dish or similar Improvement on the roof (or elsewhere on) the Building(s) in which their Commercial Unit is located provided that same is ancillary to the operation of the business then-being operated within such Owner's Commercial Unit.

11.8 **AMENDMENTS**. UNDER NO CIRCUMSTANCES SHALL THIS DECLARATION BE AMENDED TO AFFECT OR MODIFY ANY USE RIGHTS APPLICABLE TO THE COMMERCIAL UNIT, OR TO AFFECT THE RESPONSIBILITY FOR ANY COST OR EXPENSE ALLOCATIONS, INCLUDING, WITHOUT LIMITATION, ALLOCATION OF THE COMMON EXPENSES BETWEEN THE OWNERS OF RESIDENTIAL UNITS AND THE COMMERCIAL OWNER, WITHOUT THE CONSENT OF THE COMMERCIAL OWNER. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS ARTICLE AND THE REMAINDER OF THIS DECLARATION, THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

ARTICLE XII. INSURANCE

12.1 **Duty to Obtain Insurance; Types.**

12.1.1 Commercial Liability. The Board shall cause to be obtained and maintained adequate commercial general liability insurance, with such limits as may be considered acceptable to FNMA (but in no event less than Three Million Dollars ($3,000,000)) covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area. In any event, and notwithstanding any other provision herein, the Association shall maintain, at a minimum, insurance as required by Section 1365.9 of the California Civil Code, as same may be amended from time to time.

12.1.2 Fire and Casualty Insurance. The Board shall also cause to be obtained and maintained fire, flood and casualty insurance (all risk) with extended coverage (on special perils form), without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Area and those portions of the Units consisting of all fixtures, installations or additions comprising a part of the buildings housing the Units and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof, in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. In the event of any fire, earthquake, flood, casualty, or similar event, the Association shall have the Common Area and all Improvements thereon inspected by qualified consultants and engineers, and shall take immediate steps to (i) tender any claim to any applicable insurance carrier under any applicable policy, and (ii) subject to the requirements of any such carrier, commence repair of any damage caused by such event.

12.1.3 Fidelity Bonds. The Board shall also cause to be obtained and maintained on behalf of the Association, fidelity bond coverage naming the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, volunteers, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including the Reserve Fund, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one fourth (1/4) of the Budget.

12.1.4 Directors and Officers. The Board shall also cause to be obtained and maintained directors and officers liability coverage with a limit not less than Five Hundred Thousand Dollars ($500,000) for individual liability of officers and directors of the Association for negligent acts or omissions in that capacity.

12.1.5 Insurance Required by Federal Agencies. The Association shall continuously maintain in effect such casualty, flood, liability and terrorism insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by any Federal Agencies, so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by such Federal Agencies, as applicable.

12.1.6 Other Insurance. The Board of Directors shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

12.1.7 Beneficiaries. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein.

12.2 **Waiver of Claim Against Association**. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

12.3 **Right and Duty of Owners to Insure**. It is the responsibility of each Owner to provide insurance on his or her personal property and upon all other property and Improvements within or constituting such his or her Unit. Nothing herein shall preclude any Owner from carrying any liability insurance as he deems desirable to cover such his or her individual liability for damage to person or property occurring inside such his or her individual Unit or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

12.3.1 Notwithstanding any other provision herein, each Commercial Owner shall be obligated to obtain and maintain (or cause tenants leasing all or any part of any Commercial Unit to obtain and maintain) commercial general liability insurance for liability to patrons, Residential Owners, Commercial Owners, other tenants within the Project, and/or any other parties for claims related to the ownership and/or operation of such Owner's or tenant's Commercial Unit, and the activities thereon of such Owner and/or its tenants, invitees, licensees, customers, agents, or employees.

12.4 **Notice of Expiration Requirements**. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Beneficiary, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be canceled or substantially modified without ten (10) days' prior written notice to any insurance trustee named pursuant to Section 12.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

12.5 **Insurance Premiums**. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. That portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

12.6 **Trustee for Policies**. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by or for the benefit of the Association. The Association shall be the "First Named Insured" under such policies. All insurance proceeds under any such policies as provided for in Section 12.1 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article XIII of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 13.4 of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

12.7 **Actions as Trustee**. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the First Mortgages held by First Mortgagees who have filed requests under Section 13.4. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

12.8 **Annual Insurance Review**. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 12.1 above. The Board shall obtain at least three (3) bids for all insurance policies carried by the Association on an annual basis and shall select the lowest reputable bid. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Property without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

12.9 **Required Waiver**. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

12.9.1 subrogation of claims against the Owners and tenants of the Owners;

12.9.2 any defense based upon coinsurance;

12.9.3 any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

12.9.4 any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

12.9.5 any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

12.9.6 notice of the assignment of any Owner of such Owner's interest in the insurance by virtue of a conveyance of any Condominium; and

12.9.7 any right to require any assignment of any Mortgage to the insurer.

ARTICLE XIII.
DESTRUCTION OF IMPROVEMENTS

13.1 **Restoration of the Property**. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article XIII hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available (which Condominium Plan and/or construction plans shall be modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction), unless changes recommended by the Architectural Committee have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of First Mortgages upon the Condominiums and the proposed changes have been approved by applicable regulatory approval. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions to Reconstruction**") have first been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the Owners and by the written consent of the Beneficiaries of fifty-one percent (51%) of the First Mortgages on the Condominiums in the Project; and (b) within six (6) months after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair, it shall be conclusively presumed that the Owners have determined not to proceed with restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in Section 13.2 below.

13.2 **Sale of Property and Right to Partition**. No Owner shall have the right to partition of such Owner's interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 1359(b) of the California Civil Code as amended or in any successor statute. For purposes of Subsection 4 of said Section 1359(b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 13.1 above have failed to occur; and (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of sixty-seven percent (67%) of the Condominiums in the Project approve the partition by vote or written consent. In such event, the

Association, acting through a majority of the Board, shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing herein shall be deemed to prevent partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

13.3 **Interior Damage**. With the exception of any casualty or damage insured against by the Association pursuant to Section 12.1 of this Declaration, restoration and repair of any damage to the interior of any individual Condominium, including without limitation all fixtures, cabinets and Improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

13.4 **Notice to Owners and Listed Mortgagees**. The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Area, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of First Mortgages on Condominiums in the Project, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Unit who has filed a written request for such notice with the Board.

ARTICLE XIV.
EMINENT DOMAIN

14.1 **Eminent Domain**. The term "taking" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Unit Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

14.2 **Project Condemnation**. If there is a taking of an interest in all or part of the Project such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Owners of Units (a) not taken, or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively, the "**Remaining Units**") do not by affirmative vote of at least one-third of their voting power approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Area and the Remaining Units, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 13.2.

14.3 **Condemnation of Common Area**. If there is a taking of all or any portion of the Common Area (other than Exclusive Use Common Area), or any interest therein, other than the taking of an undivided interest in the Lot 1 Common Element taken as a result of the taking of a Condominium, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

14.4 **Condemnation of Exclusive Use Common Area**. If there is a taking of all or any portion of an Exclusive Use Common Area, which Exclusive Use Common Area is not taken in connection with the taking of all or any portion of the Unit to which it is appurtenant, the award in condemnation shall be paid to the Owner of the Unit to which the taken Exclusive Use Common Area was appurtenant; *provided, however*, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

14.5 **Condemnation of Condominiums**. If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; *provided, however*, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

14.6 **Condemnation of Portions of Units**.

14.6.1 **Minor Takings Within Limits**. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration of such Units can be accomplished at a cost less than or equal to the sum of (A) the amount of the condemnation awards for such takings plus (B) any amounts the Owners of the taken Units wish to contribute to restoration plus (C) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "**Allowable Cost**"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; *provided, however*, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

14.6.2 **Minor Takings Exceeding Limits**. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a special meeting of the Members (a "**Special Meeting**"). If more than fifty percent (50%) of the Members are represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

14.6.3 **Major Takings**. If the requisite approval is not obtained at the Special Meeting referred to in Section 16.6.2, or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units as residential dwellings is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units; *provided, however*, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Common Areas shall become part of the Common Area, and the Owners of such taken Units, by acceptance of the award allotted to them in taking proceedings, hereby relinquish (i) to the Association such remaining portion of the taken Units and appurtenant Exclusive Use Common Area, (ii) to the other Owners, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area. Each Owner relinquishing his ownership interest pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence shall not be liable for Assessments under this Declaration which accrue on or after the date such Owner accepts the condemnation award.

14.7 **Portions of Awards in Condemnation Not Compensatory for Value of Real Property**. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (*e.g.*, awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

14.8 **Notice to Owners and Mortgagees**. The Board, upon learning of any taking affecting a material portion of the Property, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on Condominiums in the Project who have filed a written request for such notice with the Association. The Board, upon learning of any taking affecting a Unit, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Unit who has filed a written request for such notice with the Association.

ARTICLE XV.
LEASING AND HOTEL LEASING PROGRAM

The foregoing restrictions shall apply only to Residential Units and shall not apply to any leases affecting the Commercial Units.

15.1 **Hotel Leasing Program**. Any Residential Owner may apply to have his Residential Unit participate in the Hotel Leasing Program established and operated by the Hotel Operator. Participating Residential Units in the Hotel Leasing Program may be leased out by the Hotel Operator, and a Residential Owner of a Residential Unit which is leased out shall be entitled to a certain portion of the revenue paid by the Hotel Guest in connection which renting such Unit. Participation in the Hotel Leasing Program will require meeting the conditions and requirements set forth by the Hotel Operator which may include maintaining certain decorative or aesthetic standards within the Unit. Participation in the Hotel Leasing Program is completely voluntary, acceptance by the Hotel Operator into the same is in Hotel Operator's sole discretion, and Declarant makes no representations or warranties with respect to the same. Any interested Residential Owner must direct all inquiries with respect to the Hotel Leasing Program to the Hotel Operator. Notwithstanding the foregoing, Declarant makes no assurance that the Hotel Leasing Program will ever be established or if such Hotel Leasing Program will continue for any period of time, and potential purchasers of a Residential Unit should not purchase such Unit with any expectation of any return, profit potential, or tax benefits from participation in such program. In the event the Hotel Leasing Program is initiated, and an Owner of a Residential Unit elects and is permitted to participate in the Hotel Leasing Program, such participation will be pursuant to a separate agreement to be entered into between the Owner of the Residential Unit and the Hotel Operator, and subject to any requirements imposed by the Hotel Operator (e.g., availability of Units, quality and scope of furnishings, participation in hotel switchboard, *etc.*). Continued participation of a particular Residential Unit in the Hotel Leasing Program is not guaranteed. An Owner's participation in the Hotel Leasing Program may require such Owner to maintain certain decorative features within his or her Residential Unit. Further, participation in the Hotel Leasing Program could result in damage to the Residential Unit. An Owner of a Residential Unit shall carefully consider the potential pros and cons of participating in the Hotel Leasing Program and should consult his or her attorney, tax professional, and financial advisor with respect to any legal and financial implications in connection with the same.

15.1.1 Payment of Transient Occupancy Taxes by Hotel Operator. In connection with the Hotel Leasing Program, the Hotel Operator shall collect all Transient Occupancy Taxes imposed on Hotel Guests by the City of Pismo Beach, and shall deliver such Transient Occupancy Taxes to the City Of Pismo Beach.

15.2 **Concierge**. The Hotel Operator shall hire a concierge to provide services to Hotel Guests and Residential Owners. Fifty percent (50%) of the costs associated with the concierge shall be paid for by the Hotel Owner, and fifty percent (50%) of such costs shall be added to the Budget as a Residential Common Expense. The Restaurant Owner shall not be required to contribute toward the costs of the concierge.

15.3 **Additional Amenities**. The Hotel Operator shall offer additional amenities to the Hotel Guests, and such amenities may also by available for purchase by Residential Owners that do not participate in the Hotel Leasing Program (*e.g.*, cleaning services, telephone switchboard).

15.4 **Leases Not Less Than Sixty (60) Days**. Unless the same is rented through the Hotel Leasing Program, Declarant may rent any Unit owned by Declarant provided same is rented pursuant to a written lease or rental agreement for a term of not less than sixty (60) days. Unless the same is rented through the Hotel Leasing Program, an Owner (other than Declarant) may rent his Residential Unit provided that the Unit is rented pursuant to a written lease or rental agreement for a term of not less than sixty (60) days, subject to the provisions of this Declaration, and the following additional requirements applicable to the leasing of Units by Owners other than Declarant:

15.4.1 **Lease Addendum**. All such leases shall contain an addendum to the lease (the "**Lease Addendum**") which shall be signed by the lessee and returned to the Association prior to the lessee's occupancy of the Unit. The Lease Addendum shall contain, at a minimum, the following terms:

(a) Lessee's acknowledgment and agreement to comply with all provisions of this Declaration and the Association Rules and that any failure to do so shall constitute a default under the lease;

(b) There shall be no right of assignment or sublease;

(c) Lessee shall carry "renter's insurance;"

(d) Lessee's understanding and agreement to pay rents to the Association in the event the Owner (*i.e.*, the landlord under the lease) becomes delinquent in the payment of Assessments to the Association;

(e) Lessee's representation and warranty that occupancy of the Unit will be for lessee's personal use only and not for any commercial use; and

(f) Lessee's acknowledgment of the Association's right to initiate an unlawful detainer action against the lessee in the event the lessee fails to abide by the terms of this Declaration and/or any Association Rules.

15.5 **Transient Leasing**. Hotel condominium projects like the Project are unique from solely residential projects in that most tenants who rent units therein do so for periods of time typically less than sixty (60) days (such tenants to be referred to herein as "**Transient Occupants**"). Due to the short periods of time Transient Occupants typically reside in a project, Transient Occupants often require greater supervision and care than would a resident or longer term tenant. For example, it may take a Transient Occupant considerable time to familiarize himself or herself with the project and the amenities located thereon. Moreover, given the short duration of their occupancy, certain Transient Occupants may not be as considerate for project common areas and amenities as would a residential owner or longer term tenant. As such, for the greater good of the Project, it is imperative that any hotel operator have the experience and expertise necessary to adequately service Transient Occupants and enforce the rules and regulations contained in this Declaration, and such other rules and regulations as may be imposed by the City of Pismo Beach and the California Coastal Commission.

Therefore, unless the same is rented through the Hotel Leasing Program, Declarant and any other Owner may not rent his or her Residential Unit for a term less than sixty (60) days without the following additional conditions (collectively, the "**Community Protections**") being maintained: (1) general commercial liability insurance in the amount of at least two million dollars ($2,000,000) with the Association named as an additional insured under such insurance policy; (2) daily housekeeping services to be provided to Transient Occupants; (3) twenty-four (24) hour / seven (7) day a week emergency services availability to such Unit, (4) use of a management company or rental agent licensed and/or otherwise qualified by the City of Pismo Beach and which shall ensure the collection and immediate payment to the City of Pismo Beach of all applicable Transient Occupancy Taxes, and (5) compliance with all requirements of the City of Pismo Beach and the California Coastal Commission, including a covenant to promptly pay all Transient Occupancy Taxes imposed by the City of Pismo Beach.

Each Owner hereby acknowledges and agrees that the Community Protections are required for the benefit of the entire Project, and that compliance with the Community Protections is solely the responsibility of Owners seeking to lease to Transient Occupants outside of the Hotel Leasing Program. It is not the responsibility of the Association nor any of the Members to provide any of the Community Protections to Transient Occupants.

15.6 **Indemnity**. Each Owner who leases his Unit (through the Hotel Leasing Program or otherwise) agrees to indemnify, defend, and hold harmless the Association, its officers, directors, employees, invitees, and other Owners from any liability arising from the acts and omissions of his lessee. Every Owner who chooses to lease his Unit agrees that the leasing Owner shall be held liable for all acts, whether negligent or non-negligent, of his lessee.

15.7 **Common Area**. Upon the leasing of his or her Unit, each Owner automatically assigns to the lessee the Owner's right to use the Common Area and any facilities thereon. The Owner may not exercise the right to use the Common Area and/or any facilities thereon until such Owner reassumes possession of the Unit.

15.8 **Unlawful Detainer to Enforce Rules; Civil Code Section 1865**. Any Owner who shall lease his Unit shall be responsible for insuring compliance by such Owner's lessee with the Association's governing documents. Failure by a tenant to comply with Section 15.9 below entitled "Assignment of Rents," or failure of any Owner to take legal action against his lessee who is in violation of the Association's governing documents (within ten (10) days after receipt of written demand so to do from the Board), shall entitle the Association, through the Board, to (1) institute unlawful detainer proceedings on behalf of such Owner against his non-Transient Occupant lessee, and (2) take such actions as are permitted under California Civil

Code Section 1865 to remove a Transient Occupant. Any expense incurred by the Association, including reasonable attorneys' fees and costs, shall become a Special Assessment against the Unit.

15.9 **Assignment of Rents**. As security for the payment of Assessments, each Owner assigns to the Association all of his rights as landlord to:

(a) collect the rents, issues and profits (collectively "**Rent**") of said Owner's Unit, including Rent due and unpaid;

(b) initiate any unlawful detainer action against the non-Transient Occupant lessee;

(c) proceed in accordance with Civil Code Section 1865 against the Transient Occupant lessee;

(d) enter upon and take possession of the Unit;

(e) re-rent the Unit in the Association's name and collect Rent therefrom without liability to the Owner, except for any Rent which may be collected over and above the Assessments owed to the Association by the Owner; and

(f) avail itself of any other remedies permitted by law.

Notwithstanding the foregoing, each Owner retains the right to collect Rent from his Unit for so long as the Owner shall be current in the payment of his Assessments to the Association. Once an Owner becomes delinquent in the payment of his Assessments, such Owner's rights as landlord are extinguished in favor of the Association. Upon any delinquency by the Owner to pay Assessments as they come due, the Association may, upon ten (10) days' written notice to such Owner and to Owner's lessee, direct the lessee to make all Rent payments to the Association until such time as the Owner's delinquency is cured. The Association's right to collect Rent is without regard to the adequacy of any other security for such indebtedness. In the event proceedings are brought by the Association to enforce any of the provisions in this Section, the prevailing party shall be entitled to recover all fees and costs (including reasonable attorneys' fees and costs) incurred by such party in such proceeding. The assignment of Rents and powers described in this Section shall not effect, and shall in all respects be subordinate to, the rights and powers of the holder of any First Mortgage on any Unit.

15.10 **Transfer of Occupancy**. Prior to the transfer of occupancy of a Unit:

(a) The Owner who leases the Unit, other than through the Hotel Leasing Program, shall promptly notify the Association in writing of the name and address of the lessee, as well as such other information relative to the lease and the lessee as the Association may reasonably request. A copy of the signed Lease Addendum must be submitted to the Association prior to the occupancy of the Unit by the lessee.

(b) To defray the expense incurred by the Association in facilitating moves into and out of the Project by tenants (including the cost of wear and tear to the Common Areas), the Board may impose and collect a reasonable amount in the form of a Special Assessment from any Owner upon each transfer of occupancy of said Owner's Unit.

Each Owner shall indemnify, defend and hold harmless the Association, as well as its officers, directors, and employees from any injury or damage resulting from the transfer of occupancy.

15.11 **Payment of Transient Occupancy Taxes; Reimbursement Assessment**. In the event an Owner or its agent does not pay the Transient Occupancy Taxes owed on their Unit, the Association shall pay such Transient Occupancy Taxes, and the Owner of such Unit shall be assessed a Reimbursement Assessment in the amount of such payment by the Association, plus costs.

ARTICLE XVI.
ANNUAL INSPECTION

16.1 **Duty to Inspect**. It shall be the duty of the Board to have the Common Area inspected at least once each year.

16.2 **Purpose of Inspection**. The purpose of the inspection shall be to (i) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established in Section 5.1 hereof, (ii) identify the condition of the Common Area and any Improvements thereon including the existence of any hazards or defects, and the need to perform additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

16.3 **Scope of Inspection**. All of the Common Area and the Improvements thereon including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected.

16.4 **Experts and Consultants**. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Article.

16.5 **Report to Owners**. The Board shall have prepared a report of the results of the inspection of the Common Area required by this Article. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Budget. The report shall include, at a minimum, the following:

(a) a description of the condition of the Common Area, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any experts or consultants employed by the Board to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) such other matters as the Board deems appropriate.

ARTICLE XVII.
RIGHTS OF MORTGAGEES

17.1 **Filing Notice; Notices and Approvals**. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Unit within the Property. Such notice need not state which Units are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

17.2 **Priority of Mortgage Lien**. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit except as otherwise provided in this Article.

17.3 **Curing Defaults**. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

17.4 **Resale**. It is intended that any loan to facilitate the resale of any Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

17.5 **Relationship with Assessment Liens**.

17.5.1 The lien for the payment of Assessments (excepting Remedial Assessments) shall be subordinate to the lien of any First Mortgage which was Recorded prior to the date any such Assessment becomes due.

17.5.2 If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a First Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such First Mortgage; and (2) the foreclosure of the lien of said First Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "**Events of Foreclosure**") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

17.5.3 Any Mortgagee who obtains title to a Unit by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrue prior to the time such Mortgagee or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro-rata reallocation of such Assessments to all Units within the Property.

17.5.4 Nothing in this Article shall be construed to release any Owner from his or her obligations to pay for any Assessment levied pursuant to this Declaration.

17.6 **Seventy-Five Percent (75%) Vote of Institutional Mortgagees**. Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

17.6.1 dissolve the Association or abandon or terminate the maintenance of the Common Area by the Association;

17.6.2 amend a material provision of this Declaration or of the Bylaws, provided "material amendment" shall mean amendments governing the following subjects:

(a) the fundamental purpose for which the Development was created (such as a change from residential/commercial use to a different use);

(b) voting;

(c) Assessments, Assessment liens, and subordination thereof;

(d) the reserve for repair and replacement of the Common Area;

(e) property maintenance obligations;

(f) casualty, fidelity and liability insurance;

(g) reconstruction in the event of damage or destruction;

(h) rights to use the Common Area;

(i) any provision, which by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights of First Mortgagees; and

(j) restrictions on the leasing of Units.

17.6.3 Effectuate any decision to terminate professional management and assume self-management of the Property; or

17.6.4 Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Area; provided, however, the granting of easements for public utilities or other purposes consistent with the intended use of the Common Area shall not require such approval.

17.7 **Other Rights of Institutional Mortgagees**. Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

17.7.1 inspect the books and records of the Association during normal business hours;

17.7.2 receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

17.7.3 receive written notice of all annual and special meetings of the Members of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; *provided, however*, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

17.7.4 receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Unit is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Units to which such request relates.

17.8 **Mortgagees Furnishing Information**. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

17.9 **Right of First Refusal**. In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Unit, a Mortgagee who comes into possession of a Unit pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

17.10 **Conflicts**. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

17.11 **Voting Rights of Institutional Mortgagees**. In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or its representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Unit at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

17.12 **Notice of Destruction or Taking**. In the event that any Common Area, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars ($10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

17.13 **Payment of Taxes or Premiums by Institutional Mortgagees**. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

ARTICLE XVIII.
DURATION AND AMENDMENT

18.1 **Duration**. This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which the term shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 18.2 is Recorded. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect.

18.2 **<u>Termination and Amendment</u>**.

18.2.1 Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of Members of the Association, and (ii) sixty-seven percent (67%) of the voting power of the Association residing in Members other than Declarant, provided that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision.

18.2.2 Termination of this Declaration shall require approval by the Members as provided in <u>Section 18.2.1</u> above. No such termination shall be effective unless it is also approved in advance by seventy-five percent (75%) of the Institutional Mortgagees.

18.2.3 Each Beneficiary of a First Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

18.2.4 A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a "Certificate of Amendment" is Recorded. The Certificate, signed and sworn to by two (2) officers of the Association that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of First Mortgages shall include a certification that the requisite approval of such First Mortgagees has been obtained.

18.2.5 Notwithstanding any other provisions of this <u>Section 18.2</u>, but subject to <u>Section 18.2.8</u> below, at any time prior to the first anniversary of the first Close of Escrow for the sale of a Residential Condominium in the Property, Declarant may unilaterally amend this Declaration in its sole and absolute discretion by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant.

18.2.6 Notwithstanding any other provisions of this <u>Section 18.2</u>, but subject to <u>Section 18.2.8</u> below, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of the DRE, the City, or any of the Federal Agencies then in effect.

18.2.7 Notwithstanding any other provisions of this Declaration, but subject to Section 18.2.8 below, Declarant reserves the right at any time to unilaterally make certain amendments to this Declaration and/or the Condominium Plan to amend same to add any necessary easements and/or use rights consistent with the overall development of the Property, and to make technical corrections, correct errors or omissions, or more precisely describe the actual sizes and locations of the areas or Improvements described herein including, without limitation, such adjustments to Unit boundary lines, Common Area boundaries, and/or any other matters as necessary to accommodate minor encroachments of Improvements in, to, over, or across any Unit, or Common Area, and each Owner by acceptance of a grant deed to its Unit, acknowledges, accepts, and takes subject to the possibility of such possible adjustments. Declarant shall effect such changes by preparing or causing to be prepared, and recording or causing to be recorded, a declaration in a form determined by Declarant.

18.2.8 Notwithstanding any other provision herein, without the City's prior written consent, no amendment of this Declaration shall be effective which affects, amends, modifies, or terminates (i) any rights of the City, (ii) any provision hereof required to be included herein by the City including pursuant to any condition of approval of any entitlement for the Property), and (iii) Sections 1.78, 2.6, 4.2(b)(i), 5.1, 5.4, 8.1.8, 10.8.1, 10.11, 15.1.1, 15.5, 15.11 and this Section 18.2.8.

18.3 **Protection of Declarant**. The prior written approval of Declarant, as developer of the Property, shall be required for any amendment to this Declaration, which would affect, impair or diminish the rights, duties or obligations of Declarant hereunder, or would otherwise affect, impair, or diminish Declarant's ability to complete the Property or sell or lease Condominiums therein in accordance with this Declaration. Notwithstanding any other provisions of the Restrictions, until such time as Declarant no longer owns any Condominiums in the Property, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

18.3.1 Any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Section 17.6;

18.3.2 The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant; or

18.3.3 Subject to Section 7.4 regarding limitations on Regular Assessment increases, any significant reduction of Association maintenance or other services.

18.4 **Protection of Commercial Owners**. The prior written approval of the Commercial Owners shall be required for any amendment to this Declaration which would affect, impair or diminish the rights, duties, or obligations of any Commercial Owner or would otherwise affect, impair or diminish the ability of any Commercial Owner to sell, lease or operate any Commercial Unit.

ARTICLE XIX.
DEVELOPMENT DISCLOSURES

Each Owner, by acceptance of a grant deed to a Unit, acknowledges the following:

19.1 **Notice Regarding Water Intrusion**. Notwithstanding any other provision herein, in the event that there shall be intrusion of water into any Unit (including, without limitation, as a result of any roof, window, skylight, siding or other leaks (including, without limitation, plumbing leaks), and whether or not the cause of such leak constitutes a Repair Issue), the Owner of the impacted Unit shall be obligated to immediately notify the Association of such event, and such Owner shall take all necessary and appropriate action to repair such condition and stop any such water intrusion. In the event of any water intrusion into the Common Areas and/or upon the Association's receipt of notice from a Unit Owner regarding water intrusion in such Units, the Association shall thereafter take all appropriate action including a prompt inspection of the condition, repair of the condition (if such condition impacts the Common Area) and 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. Failure of any Owner to timely notify the Association of any such water intrusion and the failure of the Association to promptly repair such condition shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken. It is recognized that a number of windows, sunlights and other elements of the Project were constructed or installed prior to Declarant's ownership of the Property and the conversion of same into condominiums and that, accordingly, Declarant is not obligated to repair or take any other corrective action with respect to such items.

19.2 **Mold**. There is, and will always be, the presence of certain biological organisms within the Unit. Most typically, this will include the common occurrence of mold. In recent years, mold has received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Owner's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on patio or deck areas, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase mold levels within the Unit. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Owner to monitor and maintain his or her Unit so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

19.3 **View Impairment**. Declarant makes no representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of any Unit or the Project. The view from the Property and any portion of the Project may change, be affected or obstructed by (i) construction or installation of any Improvements by Declarant or other owners of property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Project. Under California law, views are not subject to legal protection, and Declarant, like any other property owner, enjoys the rights and remedies available to it based on its ownership of such properties.

19.4 **Mixed-Use Development**. The Property is part of a "mixed-use" development, including both residential and commercial elements. The Project is comprised of seventy (70) Residential Condominiums, two (2) Commercial Condominiums, Patios, Balconies, a pool, exercise facilities, walkways, hallways and landscaping. Combining commercial and residential uses may present a number of issues and concerns which may not otherwise be present in a strictly residential project, including, without limitation, additional noise, odors, fumes, smoke (including, without limitation, exhaust from restaurants operated within the commercial components of the Project), vehicular traffic, pedestrian traffic, diminished security, and other similar issues and/or disturbances associated with any area where commercial activity is present or prevalent. Operation of the Hotel Leasing Program and the Restaurant Unit make the project unique from typical purely residential developments. Since the Project will be frequented by Hotel Guests, restaurant visitors, and other non-owners who attend events within the Project, the Project will have a transient environment not typically associated with a strictly residential project. Further, the Restaurant Unit will service the general public which may create a commercial environment. As such, the Project may lack the feel of a "residential community." In connection with the operation of the Hotel Leasing Program, check-in, concierge, room service, housekeeping and other hotel amenities may be provided to Hotel Guests at all times (including late at night or early in the morning) and this may create certain negative impacts. As such, any potential purchaser of a unit within the project should carefully consider the potential pros and cons of such a purchase.

19.5 **Spa and Other Hotel Services**. The Hotel Owner and Hotel Operator reserve the right to use one or more of the Residential Condominiums which they own for purposes of providing spa and/or other hotel related services or amenities (*e.g.*, conference or meeting facilities, sales and marketing, internet access, *etc.*) in connection with the operation of the Hotel Leasing Program. It is currently contemplated that Unit 131 will be used for purposes of providing spa or other hotel related services or amenities. Notwithstanding the foregoing, there is no guarantee that Unit 131 or any other Residential Condominium will be used to provide spa services and/or other hotel related services or amenities. When any Residential Condominium owned by the Hotel Owner is not used for purposes of providing spa and/or other hotel related services or amenities, such Residential Condominium may be sold for residential purposes. The Hotel Owner shall not be required to pay any additional Assessments on such Residential Condominium(s) based on the use of such Residential Condominium(s) for spa and/or other hotel related services or amenities.

19.6 **Hotel**. It is currently contemplated that the Hotel Operator will establish a short term leasing program whereby Residential Units in the Project will be offered for rental to Hotel Guests through the Hotel Leasing Program. Declarant makes no assurance that the Hotel

Leasing Program will ever be established or if such Hotel Leasing Program will continue for any period of time. No Residential Owner has purchased their Unit with any expectation of any return or other profit potential from the Hotel Leasing Program. In the event the Hotel Leasing Program is initiated, each Residential Owner may elect to have his or her Residence considered for inclusion among those units to be rented out of the Hotel Leasing Program, but inclusion of the Residence in such program is not guaranteed, and is at the sole discretion of the Hotel Operator. Participation in the Hotel Leasing Program is purely voluntary and there is no expectation that any Residential Owner will participate in the Hotel Leasing Program. Any Owner's purchase of a Unit is not based on any representation from Declarant regarding any profit or tax benefits. Participation in the Hotel Leasing Program will be pursuant to a separate agreement to be entered into between such Owner and the Hotel Operator and subject to any requirements imposed by the Hotel Operator (*e.g.*, availability of units, quality and scope of furnishings, participation in hotel switchboard, *etc.*). Owner's participation in the Hotel Leasing Program may require Owner to maintain certain decorative features within his or her Unit. Further, participation in the Hotel Leasing Program could result in damage to Owner's Residence, and Declarant disclaims any liability with respect to such damage. Each Owner considering participation in the Hotel Leasing Program should consider the potential pros and cons of participating in the Hotel Leasing Program and should consult his or her attorney and tax professional with respect to any legal or financial implications in connection with the same.

19.7 **Not a "Security"; No expectation of Profit, Income, or Tax Benefits**. Residential Owner: (1) is not purchasing a "security;" (2) is purchasing a Unit for residential and not investment purposes; and (3) is not purchasing a Residential Unit based on any expectation of income, profit, or tax benefits. Prior to purchasing his or her Unit, each Owner of a Residential Unit consulted his or her own tax, legal and financial advisors with respect to the implications of owning a Residential Unit and leasing the same through the Hotel Leasing Program and/or as otherwise described herein.

19.8 **Hotel Amenities**. In connection with the operation of the Hotel, the Hotel Operator will provide numerous services to Hotel Guests such as concierge, valet, room service, telephone switchboard, and housekeeping services (the "**Hotel Amenities**"). Each Residential Owner is not automatically entitled to such services by reason of such Owner's purchase of a Residential Unit, however, each Residential Owner may contract with the Hotel Operator to have such Hotel Amenities provided for a fee to be set by the Hotel Operator. Notwithstanding the foregoing, Declarant makes no assurance that any Hotel Amenities will be offered by Hotel Operator to any Owner, and each Residential Owner did not purchase their Residential Unit with any expectation that such Hotel Amenities would be available.

19.9 **Hotel Leasing Program Impacts**. If initiated, the operation of the Hotel Leasing Program will generate a more transient environment usually associated with a hotel rather than a purely residential project. As such, the Project may lack the feel of a "community." In connection with the operation of the Hotel Leasing Program, Hotel Amenities may be provided to Hotel Guests at all times (including late at night or early in the morning) and this may create certain negative impacts. Each Residential Owner recognizes the potential impacts that the operation of the Hotel Leasing Program could create, and has carefully considered these impacts before deciding whether to purchase the Residential Unit in the Project.

19.10 **Restaurant**. As currently contemplated, the Restaurant will service Owners, Hotel Guests and third parties not staying at the Project. The Restaurant may deliver room service at all hours of the night to Residential Units and Hotel Guests. The Restaurant may serve alcohol and certain visitors may get intoxicated. The smell of food may attract certain pests such as cockroaches, birds, and rodents. Patrons of the Restaurant will create noise, and the Restaurant Owner will host events (*e.g.*, weddings) in the Restaurant and in certain permitted outdoor areas of the Project. The Restaurant may host musical performers with amplified music. Each Owner recognizes the potential impacts that the operation of the Restaurant within the Project could create. Notwithstanding the foregoing, the Restaurant may never be opened, or if it is opened, may close down. Each Owners purchase of a Residential Unit was not based on any expectation that the Restaurant will ever be or remain opened.

19.11 **Noise**. The Project is also located near the ocean, and adjacent to a public beach area. Between the public beach area and the Project lies a bluff area. The bluff area and the public beach area are a community resource which will be accessed by residents and visitors of the City of Pismo Beach. As a result, there will be numerous noise impacts occurring in close proximity of the Project. Further, each Owner should expect noise from ocean life and passing boats to occur frequently. As described above, the Restaurant will create noise. The Project is also located next to the 101 Freeway which is heavily used and will cause noise impacts. The Project contains a pool area, a Wedding Area, and a BBQ Area, and it is likely that those who use such areas (including Hotel Guests and children) will make noise.

19.12 **Neighborhood Conditions**. The Project is located near a public beach and a bluff area. The bluff area and the public beach area are community resources which will be accessed and enjoyed by residents and visitors of the City of Pismo Beach. The bluff area and the public beach will also generate numerous unique conditions and impacts not typically associated with projects located further inland. Such impacts and conditions include, without limitation, the sound of the ocean, passing boats, and impacts created by beach visitors (e.g., noise, littering, *etc.*). Many of the foregoing impacts occur at all times of the day and night. Each Owner acknowledges that the foregoing impacts are nevertheless a major element of the unique characteristics which attracted such Owner to the Project and recognizes that Declarant and the Association have no obligation to take any action to reduce or eliminate the foregoing impacts.

19.13 **Fifteen Parking Spaces for General Public**. As set forth in Section 8.1.8 herein, fifteen (15) above ground parking spaces designated on the Condominium Plan as "Public Coastal Access Parking Spaces" are reserved for members of the local community who desire to access the coastal area via the Project.

19.14 **Additional Development**. There are a number of properties located in the vicinity of the Project which may be developed or readapted in the future. Each Owner recognizes the potential impacts of such development on the community and the Project (*e.g.*, additional traffic, parking impacts, noise impacts, market impacts, *etc.*) and purchased their Unit with the full understanding of such potential impacts.

19.15 **Proposition 65**. In 1986 California voters approved Proposition 65, an initiative measure officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986.

Proposition 65 requires entities to warn persons of an exposure to certain chemicals which have been placed on a list by the Governor as substances known to the State to cause cancer or reproductive toxicity. As the law currently exists, an entity must provide a Proposition 65 warning if there is a potential for such exposure unless it can be proven with certainty, through scientific testing and analysis that the exposure level is so small that it poses no significant risk to the person exposed. Some of the chemicals listed under Proposition 65 have long been used in building materials and may be found in such common construction products as cement, lumber, paint, carpeting, plastic and glass. As such, the Declarant makes the following warning:

WARNING: AREAS IN THE PROJECT AND THE RESPECTIVE UNITS MAY CONTAIN CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM. SUCH CHEMICALS MAY INCLUDE FORMALDEHYDE WHICH IS OFTEN FOUND IN WALLBOARDS AND CARPET GLUES, BENZENE FOUND IN SOME VARNISHES, LEAD FOUND IN BRASS SHUT-OFF VALVES AND SOME LIGHT BULBS, AND/OR STYRENE OXIDES FOUND IN SOME CARPETS.

19.16 **Diablo Canyon Nuclear Power Plant**. The Project is within five (5) miles of a nuclear power plant.

19.17 **Affiliate of Developer Purchasing Most Residential Units**. The principals of the Declarant will initially own many of the Units within the Project and shall have majority control over the Association.

19.18 **Affiliate of Declarant is the Initial Hotel Operator**. The Hotel Operator will be, at least initially, an entity affiliated with Declarant.

19.19 **No Earthquake Insurance**. The initial Budget for the Project does not provide for the obtainment of earthquake insurance.

ARTICLE XX.
ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS

20.1 **Consideration by Board**. If (1) the Common Area Improvements are not completed prior to the issuance of a Final Subdivision Public Report for the Property by the DRE for the sale of Condominiums in the Project, and (2) the Association is obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension.

20.2 **Consideration by the Members**. A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Association. A vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE XXI.
GENERAL PROVISIONS

21.1 **Enforcement of Restrictions**

21.1.1 **Violations Identified by the Association**.

(a) If the Board determines that there is a violation of any provision of the Restrictions, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Architectural Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Committee.

(b) If an Owner does not perform such corrective action as is required by the Board and the Architectural Committee within the allotted time, the Board, after Notice and Hearing, may undertake to remedy such condition or violation complained of and the cost thereof shall be charged to the Owner as a Reimbursement Assessment. Such Reimbursement Assessment shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration.

(c) If the violation involves nonpayment of any type of Assessment, then the Board shall be entitled to collect such delinquent Assessment pursuant to the procedures set forth in Article VII.

21.1.2 **Violations Identified by an Owner**. In the event that an Owner alleges that another Owner, such Owner's Family, guests or tenants, is violating the Restrictions (other than nonpayment of any type of Assessment), the Owner must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in the Bylaws before the complaining Owner may resort to legal action for relief with respect to the alleged violation.

21.1.3 **Legal Proceedings**. Failure to comply with any of the terms of the Restrictions by an Owner, such Owner's Family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; provided, however, the dispute resolution procedures established herein must first be followed, if they are applicable.

21.1.4 **Limitation on Expenditures**. The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article X hereof, (ii) enforce the architectural control provisions contained in Article VI hereof, or (iii) collect any unpaid Assessments levied pursuant to this Declaration.

21.1.5 **Schedule of Fines**. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Unit, to comply with any provisions of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

21.1.6 **No Waiver**. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof.

21.1.7 **Right to Enforce**. The Board, any Owner (not at the time in default hereunder), or Declarant (so long as Declarant is an Owner) shall be entitled to enforce the Restrictions as described in this Article. Each Owner shall have a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

21.1.8 **Disputes Between the Association and a Member(s)**. Disputes between the Association and a Member(s) involving respective rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*), the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under this Declaration are subject to the dispute resolution requirements contained in California Civil Code Sections 1363.810 *et seq.*

21.2 **Unsegregated Real Property Taxes**. 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 all of the Units in the Property are taxed under a blanket tax bill covering all of the Property, each Owner shall pay such Owner's 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. Taxes assessed against the Project as a whole shall be allocated as follows:

(a) The Commercial Owners shall, collectively, be responsible for the portion of the taxes equal to the ratio of the total Square Footage of the Commercial Condominiums to the total Square Footage of all Units. The Residential Owners shall, collectively, be responsible for the portion of the taxes equal to the ratio of the total Square Footage of the Residential Units to the total Square Footage of all Units.

(b) The portion of such taxes allocated to the Commercial Owners shall thereafter be levied against all of the Commercial Owners and their Commercial Condominiums based upon the ratio of the Square Footage of each such Commercial Condominium to the Square Footage of all Commercial Condominiums.

(c) The portion of such taxes allocated to the Residential Owners shall thereafter be levied equally against all of the Residential Owners and their Condominiums based upon the number of Condominiums owned by each Residential Owner.

(d) The foregoing formulas shall be used solely to allocate blanket taxes prior to the date assessed values for the individual Units are determined (which assessed values would actually determine the appropriate amount of taxes owing by each Owner). Payments by each Owner pursuant to such formula shall be adjusted upon the actual assessed value for each Unit when finally determined (i.e., those Owners who pay more than their assessed value indicates is due shall receive a refund of such overpayment, and those Owners who pay less than their assessed value indicates is due shall make a make-up payment for such underpayment).

The Association shall, at least forty-five (45) days prior to the delinquency date of any tax installment to be allocated among the Units, deliver to each Owner in the Property a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay such Owner's proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay such Owner's proportionate share. The Association shall add to the Regular Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the Maximum Interest Rate and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with such 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. Until the Close of Escrow for the sale of ninety percent (90%) of the Residential Condominiums in the Project and the Commercial Condominiums in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

21.3 **Severability**. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

21.4 **Interpretation**.

21.4.1 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a mixed-use condominium development and for the maintenance of the Common Area. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the others, unless the context dictates otherwise.

21.4.2 Nothing herein is intended, nor shall be applied, to create any restrictive covenant or in any way to permit or create any discrimination against any Person based on such Person's race, color, religion, sex, age, sexual orientation, marital status, national origin, ancestry, familial status, source or level of income, or disability in violation of applicable law.

21.5 **Mergers or Consolidations**. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

21.6 **Confirmation of Declarant Status**. Declarant is a California general partnership. Nothing in this Declaration shall create or be deemed to create any liability on behalf of the various members of Declarant.

21.7 **No Public Right or Dedication**. Except as set forth in Section 8.1.8 herein, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, for any public use or for any purpose whatsoever, it being the intention of Declarant that this Declaration be strictly limited to and for the purposes herein expressed.

21.8 **Nonliability and Indemnification**.

21.8.1 **General Limitation**. Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural Committee, or any other officer, employee or agent of the Association. To the fullest extent permitted by law, no member of the Board or the Architectural Committee or any other committee of the Association or any officer, director, shareholder, member, employee or agent of the Association, Declarant, Declarant's members (and the members of such members), or the Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence or the like of the Association, the Board, the Architectural Committee, the manager or any other representative or employee of the Association, Declarant, or any officer of the Association, or of Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct, and within which such person reasonably believed to be the scope of his/her duties.

21.8.2 **Damages Limitation**. A volunteer Board member or volunteer Association officer shall not be personally liable in excess of the coverage of insurance specified below to any person who suffers injury, including, without limitation, bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the following conditions are satisfied:

(a) The Board member or officer is a tenant of Unit or an Owner of no more than two (2) Units;

(b) The act or omission was performed within the scope of the Board member's or officer's Association duties;

(c) The act or omission was performed in good faith;

(d) The act or omission was not willful, wanton or grossly negligent; and

(e) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance which shall include coverage for (A) general liability of the Association and (B) individual liability of officers and Board members for negligent acts or omissions in that capacity; provided that both types of coverage are in the amounts required in Article XII hereof.

21.8.3 **Volunteer Status**. A Board member or Association officer who at the time of the act or omission was the Declarant or received direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of Section 21.8.2. The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of Section 21.8.2.

21.8.4 **Indemnification**. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his or her acts on behalf of the Association, provided that:

(a) The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such person had no reasonable cause to believe his or her conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall not be entitled to vote. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

21.9 **Notices**. Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery to all co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Unit. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association or the Architectural Committee may be delivered personally to any member of the Board or the Architectural Committee, or sent by United States mail, postage prepaid, addressed to the Association or the Architectural Committee at such address as shall be fixed from time to time and circulated to all Owners. Any notice to a Mortgagee or its mortgage servicing contractor may be sent to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to the address which appears on the Mortgage held by such Mortgagee.

21.10 **Priorities and Inconsistencies**. If there are conflicts or inconsistencies between this Declaration and the Articles of Incorporation, the Association Rules or the Bylaws, the terms and provisions of this Declaration shall prevail. Notwithstanding any other provision herein, the Project is and shall remain subject to applicable laws, regulations, and discretionary and ministerial Project approvals granted by the City. The provisions of this Declaration are not intended, and shall not be applied, to supercede any provisions of applicable laws or regulations or any Project approvals granted by the City, except to the extent any such laws or regulations have been waived by the applicable governmental body with jurisdiction to enforce such laws or regulations as part of the issuance thereby of any Project approvals. Subject to the foregoing, in the event of any conflict between the terms of this Declaration and applicable law or regulation, such laws and/or regulations shall control.

21.11 **Constructive Notice and Acceptance**. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these Restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

21.12 **Declarant's Right to Cure Repair Issues Relating to Residential Units; Election To Opt Out Of Civil Code Sections 910-938**. It is Declarant's intent that the Common Area, the Residential Units, and the Improvements be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction practices for product of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. Each Owner, by acceptance to a deed to a Unit, acknowledges that Declarant has elected not to engage in, follow, nor be bound by, the portions of the Right to Repair Act set forth in California Civil Code Sections 910-938. Rather, the alternative non-adversarial procedures set forth in this Section shall apply to and bind all Owners, the Association, and the Board. It is Declarant's intent to resolve all disputes and claims regarding any "Repair Issue" (as defined below) in any portion of the Common Area, any Residential Unit, and any Improvement, amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, the Board and all Owners shall be bound by the following claim resolution procedure:

21.12.1 **Declarant's Right to Cure** If the Association, Board, or any Owner(s) (collectively, "**Claimant**") claim, contend or allege that any portion of the Common Area, any Unit, and/or any Improvement requires repair or that Declarant or any of its agents, employees, consultants, contractors or subcontractors (collectively, "**Declarant's Agents**") was responsible for the need to make any such repair (collectively, a "**Repair Issue**"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace any such Improvement as set forth herein; *provided, however,* nothing herein is intended nor shall be applied to create any obligation on Declarant to inspect, repair or replace any Improvement.

21.12.2 **Notice to Declarant**. In the event that a Claimant discovers any condition which Claimant believes to be a Repair Issue, Claimant shall, a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Repair Issue and such other matters as required by applicable law ("**Notice of Repair Issue**"). Such notice shall include: (i) a description of the Repair Issue, (ii) the date upon which the Repair Issue was discovered, and (iii) dates and times when the Claimant will be available during ordinary business hours so that service calls or inspections by Declarant can be scheduled.

21.12.3 **Right to Enter, Inspect, Repair, and/or Replace**. Within a reasonable time after the receipt by Declarant of a Notice of Repair Issue or the independent discovery of any Repair Issue by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Unit, and/or any Improvement for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing any Improvement which is the subject of the Repair Issue. In conducting such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. If Claimant fails to cooperate to arrange a mutually-convenient date and time for inspection, or fails to permit Declarant or its agent access to perform its inspection, the time for performance for Declarant or its agent to complete the inspection and/or to take any further action hereunder shall be extended until Claimant complies, but in no event shall such

Claimant's actions toll any applicable statutes of limitations nor shall Claimant have any right to seek any other rights or remedies unless Claimant complies with all the requirements hereof.

21.12.4 **Nature of Repairs**. With respect to any Repair Issue which Declarant elects to repair, such repair shall be completed in conformance with industry standards, subject to applicable laws and regulations, including the time necessary to obtain any applicable building or other permits, and subject to unavoidable delays, including, without limitation, inclement weather, earthquake, flood, other acts of God, war, terrorism, unavailability of parts or materials, labor shortages, strikes, riots, insurrection, or other similar matters. Under no circumstances shall Declarant or any of Declarant's Agents be obligated to improve any Improvements beyond the original standard set forth in applicable building codes in effect at the time of original construction. For example, if a painted interior wall is exhibiting abnormal cracking, the industry standard and customary repair is to properly patch and repaint the wall in its original color. It is not industry standard to remove and replace all existing sheetrock and then repaint the entire room. Each Owner, by acceptance of a deed to a Unit acknowledges, understands and agrees that no Owner nor the Board nor the Association has any rights to recover any damages or expenses circumstantially or otherwise related to any Repair Issue, including, without limitation, expenses incurred due to inconvenience or unpleasantness relating to the Repair Issue, lost business income as a result of nuisance, delays or disruptions, or any similar costs or expenses. In the event that any Owner or the Association alleges that a repair completed pursuant to the procedures set forth in this Section is not properly completed, or if Declarant fails to follow such procedures, such Owner or the Association shall have the right to institute judicial reference proceedings pursuant to Section 21.19 of this Declaration.

21.12.5 **Relinquishment of Control**. Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any claim against Declarant or any of Declarant's Agents with respect to any Repair Issues in any Common Areas. The decision to initiate any such claims for Repair Issues in any Common Areas shall, instead, rest with the majority of the Owners of Units other than Declarant.

21.12.6 **No Additional Obligations**. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any Improvement or otherwise address any Repair Issue for which Declarant is not otherwise obligated under applicable state and federal law or any limited warranty provided by Declarant in connection with the sale of a Unit. Notwithstanding any other provision of this Declaration, this Section shall not be amended without the prior written approval of Declarant.

21.12.7 **Manufactured Products**. Each Owner, by acceptance of a deed to a Unit, acknowledges and understands that:

(a) There are certain appliances and other equipment included in or exclusively benefiting the Owner's Unit which are manufactured by third parties (e.g., the dishwasher, heating, ventilation and air conditioning equipment, *etc.*) ("**Manufactured Products**");

(b) The only warranties for such Manufactured Products are those provided by the manufacturer; and

(c) The Owner shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.

21.12.8 **Preventative Maintenance Requirements**. Each Owner, by acceptance of a deed to a Unit, acknowledges and agrees that such Owner is responsible to properly maintain such Owner's Unit (including all Manufactured Products therein) and the Exclusive Use Common Areas benefiting such Unit in accordance with the requirements of this Declaration. In addition, the Owner shall be obligated to follow and/or implement all applicable Maintenance Standards in accordance with California Civil Code Section 907. Each Owner, by acceptance of a deed to a Unit, acknowledges that such Maintenance Standards may be set forth in a warranty and/or any homeowner's manual, operating instructions, and/or other owner's manual(s) provided by Declarant, the Association, and/or any manufacturer(s) of any Manufactured Product(s).

21.12.9 **Similar Requirements of Civil Code Section 1375**. California Civil Code Section 1375 sets forth a process which must be followed by homeowners' associations prior to filing complaints for damages against persons such as Declarant and Declarant's Agents with respect to design and/or construction of common interest developments. Such process includes requirements to provide various notices and time to respond. To the extent that (i) the provisions hereunder in this Section are enforced by the Association, (ii) the provisions hereunder in this Section are substantially similar to such provisions in Section 1375 of the California Civil Code, and (iii) an action is subsequently commenced under Section 1375 of the California Civil Code, the Association shall be excused from performing the substantially similar requirements under Section 1375 of the California Civil Code.

21.12.10 **No Affect on Code of Civil Procedure Section 411.35**. California Code of Civil Procedure Section 411.35 requires that before claims for professional negligence may be filed against certain design professionals (e.g., architects, engineers or land surveyors), the claimant's attorney must provide certification that (i) it has reviewed the applicable facts, consulted with experts, and concluded that there is a reasonable and meritorious cause for filing an action, or (ii) the attorney was unable to so consult with such experts (a) despite making at least three (3) good faith attempts, or (b) because of pending expiration of the applicable statute of limitations for filing of the claim. Nothing herein shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for matters not covered by California Civil Code Section 895 et seq.

21.13 **Legal Actions**. All legal actions initiated by a Claimant shall be brought in accordance with, and subject to the term of this Article as hereinafter set forth. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant or Declarant's Agents alleging damages (i) for the costs of repairing or the replacement of all or any portion of the Project (including any Repair Issue), (ii) for the diminution in value of any real or personal property resulting from such Repair Issue, or (iii) for any consequential damages resulting from such Repair Issue, any judgment or award in connection therewith shall first be used to correct and or repair such Repair Issue or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Repair Issue. Any excess funds remaining after repair of such Repair Issue shall be paid into the Association's applicable reserve fund.

21.14 **No Representations or Warranties**. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a mixed-use project, except as specifically and expressly set forth in this Declaration and except as may be submitted by Declarant to the DRE from time to time.

21.15 **Notification to Prospective Purchasers**. In the event that the Association commences any action or claim, all Owners must notify prospective Purchasers of such action or claim and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 1375 of the California Civil Code.

21.16 **Limitation on Expenditures**. The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article X or Article XI hereof, (ii) enforce the architectural control provisions contained in Article VI hereof, or (iii) collect any unpaid Assessments levied pursuant to this Declaration. Prior to initiation of joining as a plaintiff in any legal action, cause of action, proceeding, reference or arbitration against Declarant, such action must be approved by a majority of the voting power of the Association, and the Association must provide written notice to all Members prior to initiation of any such legal action, cause of action, proceeding, reference or arbitration against Declarant which notice shall (at a minimum) include (1) a description of the Repair Issue, (2) a description of the attempts of Declarant to correct such Repair Issue and the opportunities provided to Declarant to correct such Repair Issue, (3) a certification from an engineer licensed in the State of California that such Repair Issue exists, along with a description of the scope of work necessary to cure such Repair Issue (4) the estimated cost to repair such Repair Issue, (5) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and any members of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant and (9) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. Failure to provide the notice required herein shall not prejudice any lawsuits filed by the Association. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use the reserve funds or other monies collected for specific Association obligations other than legal fees.

21.17 **Attorneys' Fees**. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit (including post-judgment attorneys' fees and costs), as well as the amount of any delinquent payment, interest thereon, costs of collection, and costs of court or reference, as applicable.

21.18 **Effect of Declaration**. This Declaration is made for the purposes set forth in the Preamble of this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

21.19 **JUDICIAL REFERENCE OF DISPUTES AND WAIVER OF JURY TRIAL**.

21.19.1 **JUDICIAL REFERENCE**. SUBJECT TO SECTION 21.1.8 HEREOF AND EXCEPT FOR ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES (EACH A "**DISPUTE**") TO BE DETERMINED IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE WARRANTY, ANY DISPUTE BY OR BETWEEN OR AMONG THE ASSOCIATION, ANY OWNER OR OWNERS, DECLARANT, AND/OR DECLARANT'S AGENTS ARISING FROM OR RELATED TO THIS DECLARATION, THE COMMON AREAS, ANY UNIT, THE SALE OF ANY UNIT, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY SHALL BE HEARD AND DETERMINED BY A REFEREE AS PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 TO 645.1. THE VENUE OF ANY PROCEEDING SHALL BE IN SAN LUIS OBISPO COUNTY, CALIFORNIA (UNLESS CHANGED BY ORDER OF THE REFEREE). JUDICIAL REFERENCE INCLUDES THE WAIVER OF THE RIGHT TO A TRIAL BY JURY.

(a) **PROCEDURE FOR APPOINTMENT**. THE PARTY SEEKING TO RESOLVE THE DISPUTE SHALL FILE IN COURT AND SERVE ON THE OTHER PARTY A COMPLAINT DESCRIBING THE MATTERS IN DISPUTE. SERVICE OF THE COMPLAINT SHALL BE AS PRESCRIBED BY LAW OR AS OTHERWISE PROVIDED IN THIS AGREEMENT. AT ANY TIME AFTER SERVICE OF THE COMPLAINT, ANY PARTY MAY REQUEST THE DESIGNATION OF A REFEREE TO TRY THE DISPUTE. THEREAFTER THE PARTIES SHALL USE THEIR BEST EFFORTS TO AGREE UPON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN TEN (10) DAYS AFTER A WRITTEN REQUEST TO DO SO BY ANY PARTY, THEN ANY PARTY MAY PETITION THE PRESIDING JUDGE OF THE SUPERIOR COURT IN WHICH THE ACTION IS FILED OR THE SUPERIOR COURT JUDGE TO WHOM THE MATTER HAS BEEN ASSIGNED (THE "**JUDGE**") TO APPOINT A REFEREE. FOR THE GUIDANCE OF THE JUDGE MAKING THE APPOINTMENT OF THE REFEREE, THE PARTIES AGREE THAT THE PERSON SO APPOINTED SHALL BE A RETIRED JUDGE OR A LAWYER EXPERIENCED IN THE SUBJECT MATTER OF THE DISPUTE.

(b) **DECISION AND JURISDICTION OF REFEREE**. THE REFEREE SHALL DECIDE ALL ISSUES OF FACT AND LAW SUBMITTED BY THE PARTIES FOR DECISION IN THE SAME MANNER AS REQUIRED FOR A TRIAL BY COURT, INCLUDING ALL LAW AND MOTION MATTERS, EX PARTE MATTERS AND DISCOVERY DISPUTES. THE REFEREE SHALL TRY AND DECIDE THE DISPUTE ACCORDING TO ALL OF THE SUBSTANTIVE, EVIDENTIARY AND PROCEDURAL LAW OF THE STATE OF CALIFORNIA. WHEN THE REFEREE HAS DECIDED THE DISPUTE, THE REFEREE SHALL PREPARE A REASONED STATEMENT OF DECISION AND JUDGMENT. THE JUDGMENT ENTERED BY THE SUPERIOR COURT SHALL BE APPEALABLE IN THE SAME MANNER AS ANY OTHER JUDGMENT.

(c) **DISCOVERY**. DISCOVERY SHALL BE ALLOWED AND CONDUCTED UNDER THE SUPERVISION OF THE REFEREE PURSUANT TO THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND THE CALIFORNIA RULES OF COURT.

(d) **STENOGRAPHY**. A STENOGRAPHIC RECORD OF THE TRIAL AND OTHER PROCEEDINGS IS TO BE MADE, BUT WILL BE CONFIDENTIAL EXCEPT AS NECESSARY FOR POST-HEARING MOTIONS AND APPEALS.

21.19.2 **COOPERATION**. THE PARTIES SHALL DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE TO RESOLVE THE DISPUTE AND SHALL PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE.

21.19.3 **ALLOCATION OF COSTS**. THE COSTS OF THE PROCEEDING SHALL INITIALLY BE BORNE EQUALLY BY THE PARTIES TO THE DISPUTE, BUT THE PREVAILING PARTY IN THE PROCEEDING SHALL BE ENTITLED TO RECOVER, IN ADDITION TO ANY OTHER FEES OR COSTS ALLOWED BY THIS AGREEMENT, ITS CONTRIBUTION FOR THE REASONABLE COSTS OF THE REFEREE AS AN ITEM OF RECOVERABLE COSTS. IF EITHER PARTY REFUSES TO PAY SUCH PARTY'S SHARE OF THE COSTS OF THE PROCEEDING AT THE TIME REQUIRED, THE OTHER PARTY MAY DO SO IN WHICH EVENT THAT PARTY WILL BE ENTITLED TO RECOVER (OR OFFSET) THE AMOUNT ADVANCED. NOTWITHSTANDING THE FOREGOING, IF DECLARANT IS A PARTY TO THE REFERENCE, THE FEES TO INITIATE THE REFERENCE SHALL BE ADVANCED BY DECLARANT, AND SUBSEQUENT FEES AND COSTS OF THE REFERENCE AND/OR THE REFEREE SHALL BE BORNE EQUALLY BY THE PARTIES TO THE REFERENCE; PROVIDED, HOWEVER, THE FEES AND ANY OTHER FEES AND COSTS OF THE REFERENCE AND/OR THE REFEREE SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE REFEREE.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

[Signature on Following Page]

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

"DECLARANT"
HERON CREST DEVERLOPMENT,
A California General Partnership

BY: Dolphin Bay Development, LLC
A Delaware limited liability company

BY: ______________________
Richard J. Loughead, its manager

STATE OF California

COUNTY OF San Luis Obispo

On November 30, 2005 before me, MJ Ponder
(Name of Notary Public)

personally appeared Richard J. Loughead

personally known to me (or 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.

WITNESS my hand and official seal.

(Signature of Notary Public)

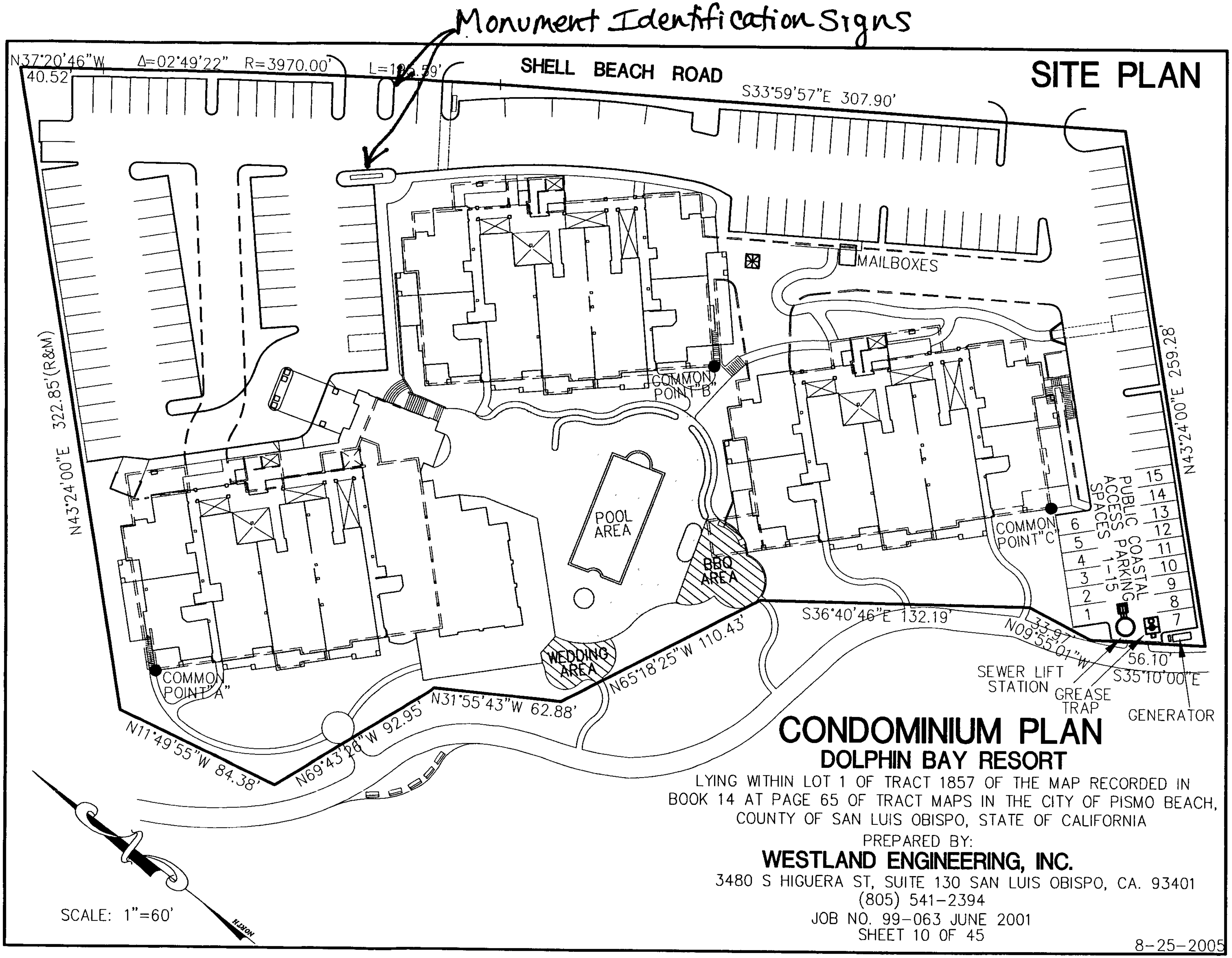
M. J. PONDER
COMM. #1460021
NOTARY PUBLIC - CALIFORNIA
SAN LUIS OBISPO COUNTY
My Comm Expires JAN 31, 2008

(This area for notarial seal)

Exhibit “A”

Depiction of Hotel Signage Sites

Attached



CONDOMINIUM PLAN
DOLPHIN BAY RESORT

LYING WITHIN LOT 1 OF TRACT 1857 OF THE MAP RECORDED IN BOOK 14 AT PAGE 65 OF TRACT MAPS IN THE CITY OF PISMO BEACH, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

PREPARED BY:

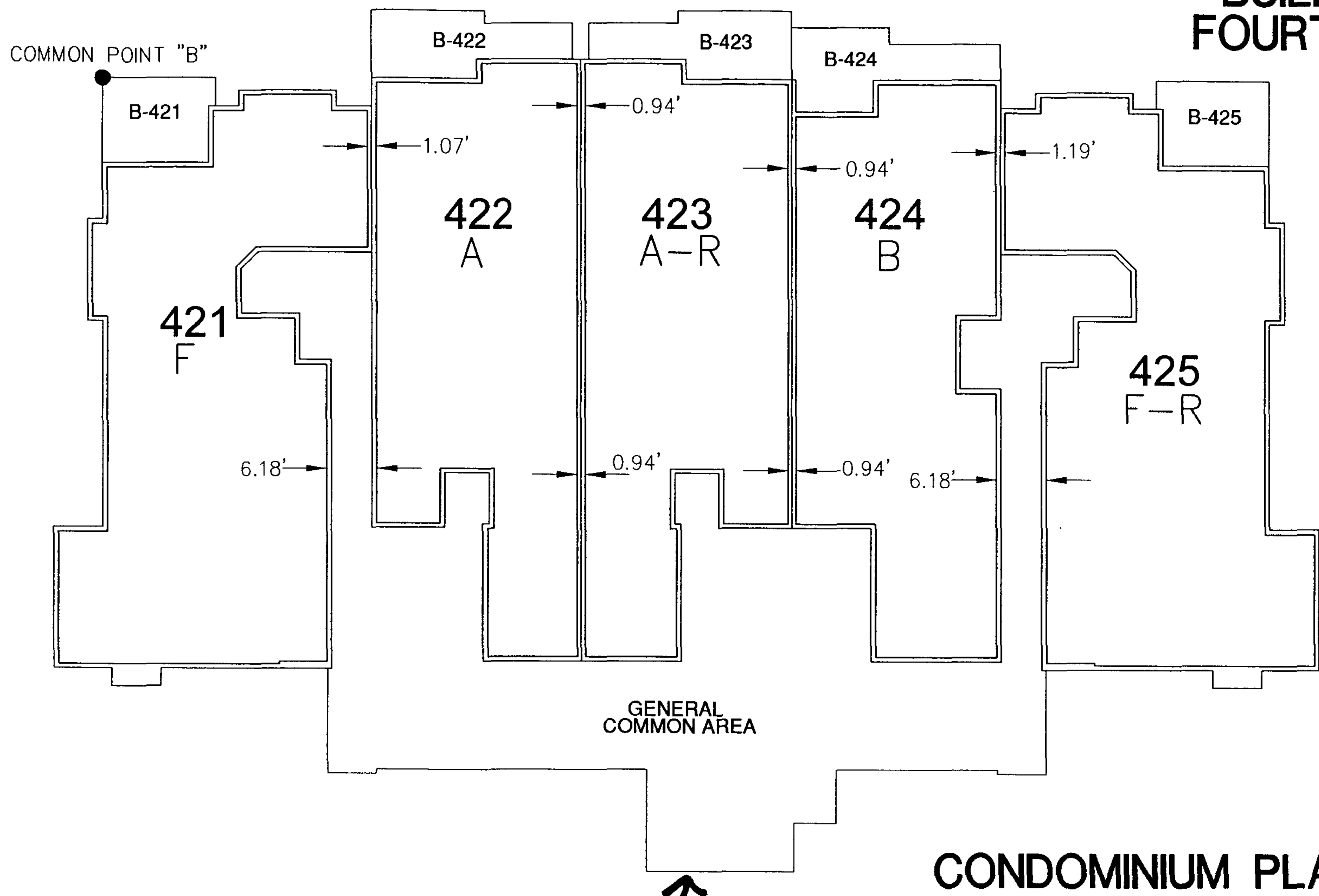
WESTLAND ENGINEERING, INC.

3480 S HIGUERA ST, SUITE 130 SAN LUIS OBISPO, CA. 93401
(805) 541-2394

JOB NO. 99-063 JUNE 2001
SHEET 10 OF 45

8-25-2005

BUILDING 2
FOURTH FLOOR



Identification sign
mounted to wall

CONDOMINIUM PLAN
DOLPHIN BAY RESORT

LYING WITHIN LOT 1 OF TRACT 1857 OF THE MAP RECORDED IN BOOK 14 AT PAGE 65 OF TRACT MAPS IN THE CITY OF PISMO BEACH, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

PREPARED BY:

WESTLAND ENGINEERING, INC.

3480 S HIGUERA ST, SUITE 130 SAN LUIS OBISPO, CA. 93401

(805) 541–2394

JOB NO. 99–063 JUNE 2001

SHEET 20 OF 45

SCALE: 1"=20'

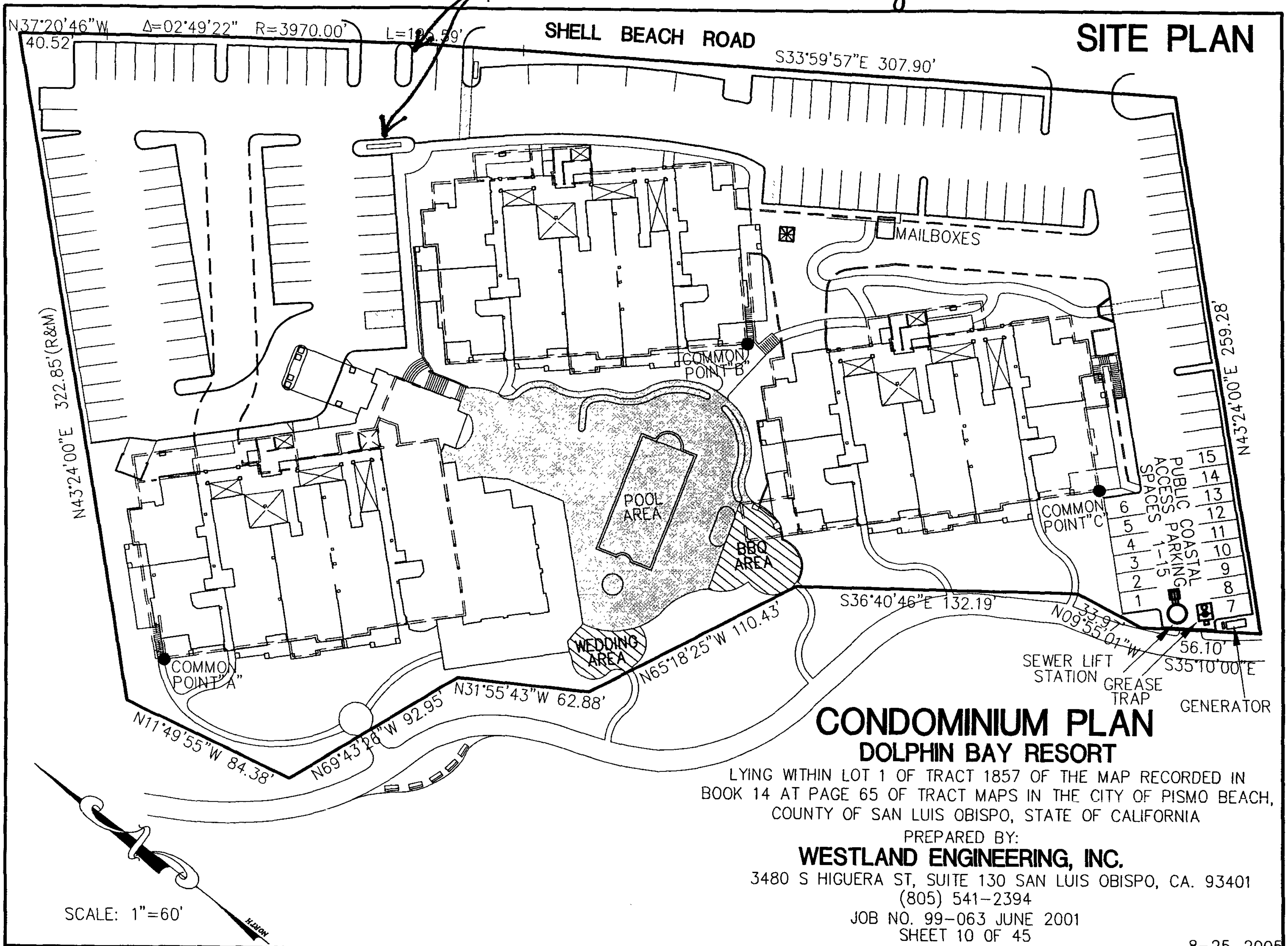
8–25–2005

Exhibit "B"

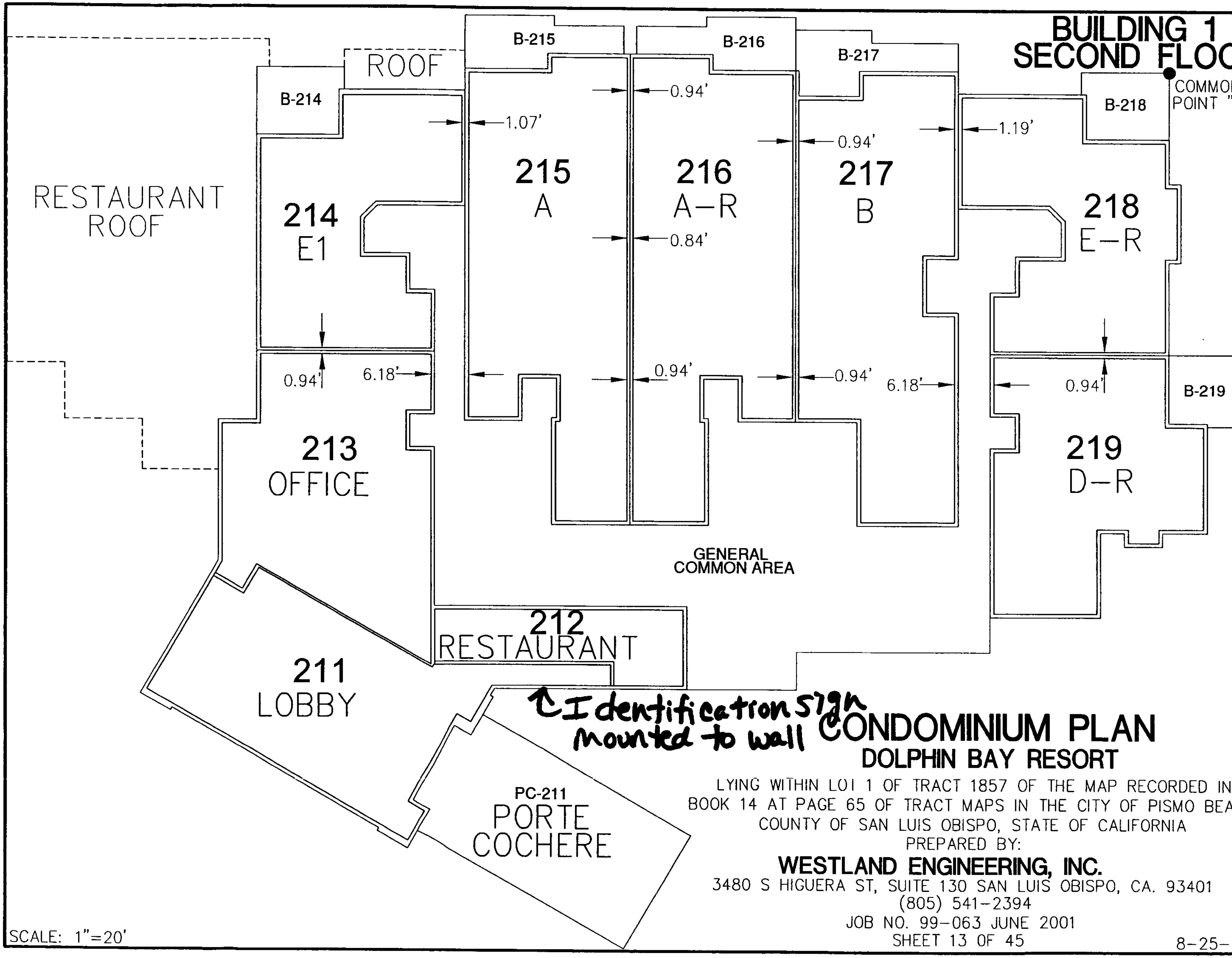
Depiction of Restaurant Signage Sites

Attached

Monument Identification Signs



BUILDING 1
SECOND FLOOR



← Identification sign mounted to wall

CONDOMINIUM PLAN
DOLPHIN BAY RESORT

LYING WITHIN LOT 1 OF TRACT 1857 OF THE MAP RECORDED IN BOOK 14 AT PAGE 65 OF TRACT MAPS IN THE CITY OF PISMO BEACH, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

PREPARED BY:

WESTLAND ENGINEERING, INC.
3480 S HIGUERA ST, SUITE 130 SAN LUIS OBISPO, CA. 93401
(805) 541-2394
JOB NO. 99-063 JUNE 2001
SHEET 13 OF 45

SCALE: 1"=20'

8-25-2005

SUBORDINATION

The undersigned, as beneficiary of that certain Construction Deed of Trust recorded on December 12, 2003, as Instrument no. 2003-140696 (the "Deed of Trust", as Modified by Instrument No. 2005-72258, by and among Heron Crest Development, a California general partnership, as Trustor, MSB Properties, Inc., as Trustee, and Mid-State Bank & Trust, as Beneficiary, hereby subordinates the lien of the Deed of Trust and Modification to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (Dolphin Bay Hotel & Residences) and any amendments thereto.

Date: 9/20, 2005

MID-STATE BANK & TRUST

BY: Clarence C. Cabreros
Its: Senior Vice President

BY: ____________________
Its: ____________________

STATE OF California)
) ss:
COUNTY OF San Luis Obispo)

On Sept. 20, 2005 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Clarence C. Cabreros, personally known to me (or 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/s~~he/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.

WITNESS my hand and official seal.

LINDA J. SILVIA
Commission # 1328396
Notary Public - California
Los Angeles County
My Comm. Expires Nov 4, 2005

Linda J. Silvia
Notary Public

END OF DOCUMENT