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SPACE ABOVE FOR RECORDER'S USE

Index as CC&R's

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
"4563 & 4565 NARRAGANSETT AVENUE"**

A Condominium Project

City of San Diego, San Diego County, California

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THIS DECLARATION is made on the day and year hereinafter written, by **RICHARD L. WATERS**, hereafter called "*Declarant*." The first-letter capitalized words used herein shall have the meanings given them in **Article 2** herein. This Declaration is made with reference to the following:

1. RECITALS

A. Declarant is the Owner of that certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described on **Exhibit "A"** attached hereto and by this reference made a part hereof, hereinafter called the "*Property*."

B. Declarant desires to configure the Property as a Common Interest Development Condominium Project ("*Project*"), pursuant to the provisions of the Davis-Stirling Common Interest Development Act (**CIVIL CODE §1351 et seq.**), whereby Declarant will subdivide the Property into Separate Interests called "*Units*," each of which, however, will be similar to a residential lot (although the Property will legally be a Condominium Project).

C. Declarant desires to impose on the Property and every portion thereof, certain covenants, conditions and restrictions, which will constitute a general scheme for the use and management of the Property as a residential community called **4563 & 4565 NARRAGANSETT AVENUE** ("*Community*"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the quality of life for the Owners and occupants thereof.

D. Declarant has or will hereafter file a Condominium Plan pursuant to Civil Code Section 1351(e) with the Office of the County Recorder of San Diego County, California, covering the Property.

E. Each Unit within the Property will consist of a separate interest in space containing all of the earth, air and improvements located within its boundaries. The lower boundary of a Unit will extend to the center of the earth below Ground Elevation; the upper boundary of a Unit will extend above Ground Elevation up to its boundary with the "*Common Area*." The lateral (side) boundaries of each Unit are shown on the Condominium Plan.

F. The Common Area is a three-dimensional portion of the Property, consisting exclusively of outside air space and containing no earth or any natural or constructed physical objects or improvements, as more fully defined herein. The Common Area, which exists in order to comply with **CIVIL CODE §1351** for the establishment and existence of a condominium project, shall be owned by both Unit Owners in undivided, equal "*Fractional Interests*" as tenants-in-common.

G. The Owner of a Unit in the Project will receive title to a Unit plus an undivided one-half (1/2) Fractional Interest in the Common Area. By virtue of owning a Unit in the Project, each Owner shall also have a membership in the **4563 & 4565 NARRAGANSETT AVENUE HOMEOWNERS ASSOCIATION**, an unincorporated association ("*Association*"), organized with the powers granted to a corporation under the Nonprofit Mutual Benefit Corporation Law (Corporations Code §7110 et seq.), which membership shall be appurtenant to and pass with title to the Unit.

H. Before selling or conveying any interests in the Property, Declarant desires to subject the Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Property or any portion thereof.

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NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Property and does hereby fix the following protective conditions and restrictions upon each and every ownership interest in the Property, under which said conditions and restrictions, each ownership interest in the Property shall be hereinafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred, subject to the limitations, conditions and restrictions hereinafter set forth, all of which shall inure to the benefit of, be binding upon and pass with the Property described above, and each and every ownership interest therein, and shall inure to the benefit of, and apply to and bind the respective successors in title or interest of Declarant.

2. DEFINITIONS

2.1. APPLICABLE LAW

"Applicable Law" shall mean and refer to any law, regulation, rule, order or ordinance of any governmental or quasi-governmental entity now in effect or hereafter promulgated, applicable to the Condominiums, the Project or any portion thereof, Declarant, Association, any Owner or Resident, or to any use or occupancy of the Condominiums and/or the Project.

2.2. ASSOCIATION.

"Association" shall mean and refer to the **4563 & 4565 NARRAGANSETT AVENUE HOMEOWNERS ASSOCIATION**, an unincorporated association described in the Section 3.7 hereinafter (also entitled "**Association**"), the members of which are the Owners of the Units.

2.3. CC&RS

"CC&RS" shall mean and refer to the covenants, conditions, restrictions, easements, limitations and other similar provisions contained in this Declaration, the other Project Documents and any Ancillary Instrument.

2.4. CITY.

"City" shall mean and refer to the City of San Diego, a municipal corporation located in the County of San Diego, State of California.

2.5. CLOSE OF ESCROW

"Close of Escrow" shall mean and refer to the date on which a deed from Declarant is Recorded conveying a Condominium to a Purchaser.

2.6. COMMON AREA.

"Common Area" shall mean and refer to the three-dimensional portion of the Lot consisting exclusively of outside air space and containing no earth or any natural or constructed physical objects or improvements. The lower vertical boundary of the Common Area shall be fifty (50) feet above the highest vertical improvement (either constructed or landscaping) **Ground Elevation**; its lateral boundaries shall be the same as the perimeter boundaries of the Lot; its upper vertical boundary extends indefinitely. The Common Area shall be conveyed by Declarant to each Purchaser of Unit as a Fractional Interest in such Common Area – one Fractional Interest for each Unit conveyed.

2.7. COMMON EXPENSES.

"Common Expenses" means and includes (a) the actual and estimated expenses of operating the Project, if any, including any real property taxes, insurance premiums which are not charged separately to each Unit, (b) any costs and expenses of Shared Responsibilities, and (c) any other sums designated to be a common expense by or pursuant to the Documents.

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2.8. CONDOMINIUM.

"Condominium" shall mean and refer to an estate in the Property, or portions thereof, as defined in **CIVIL CODE §1351(f)**, or any similar statute hereinafter enacted, and shall consist of (i) a Separate Interest in space called a "Unit" and (ii) an appurtenant Fractional Interest in the "Common Area" as described in the Condominium Plan.

2.9. CONDOMINIUM PLAN; PLAN.

"Condominium Plan" and/or "Plan" shall mean and refer to a Condominium Plan, as it may from time to time be amended, consisting of (1) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of the Project, as built or to be built, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to **CIVIL CODE §1351(e)**, signed and acknowledged by the record owner of fee title to the Property included in the Project.

2.10. COUNTY RECORDER

"County Recorder" shall mean and refer to the San Diego County Recorder, San Diego County, California.

2.11. DECLARANT.

"Declarant" shall mean and refer to **RICHARD L. WATERS**, his respective successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant, encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure of sale.

2.12. DECLARATION.

"Declaration" shall mean and refer to this Declaration recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded.

2.13. DOCUMENTS.

"Documents" means and includes this Declaration, Condominium Plan, the exhibits, if any, attached hereto, and any rules and regulations for the members as established from time to time.

2.14. DRAINAGE FACILITY(IES).

"Drainage Facilities" shall mean and refer to: (a) those area drains which run along the surface of the Property ("Area Drains"), if any; and (b) those subterranean drains ("Sub-Drains"), if any, below the Property surface.

2.15. DRIVEWAY.

"Driveway" shall mean and refer to the private driveway located within each Unit which provides: (a) access, ingress and egress to and from the dedicated street and/or alley and the parking area portion of a Dwelling, and (b) parking of motor vehicle, subject to these CC&RS.

2.16. DWELLING.

"Dwelling" shall mean and refer to a single family residential structure located within the boundaries of a Unit.

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2.17. ELIGIBLE INSURER OR GUARANTOR.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration. Such notice must contain the Unit number or the address of the secured Unit.

2.18. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Unit, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration. Such notice must contain the Unit number or the address of the secured Unit.

2.19. EMERGENCY.

"Emergency" is an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

2.20. ENTRY; ENTRY NOTICE.

"Entry" or "Entry Notice" shall mean and refer to the following protocols for providing notice of entry and actual entry into a Unit that one Owner or Occupant (the "Entering Party") or its authorized invitee is required to give to the Owner or Occupant of the other Unit in order to enter upon such other Owner's or Occupant's ("Entered Party" or "Other Party") Unit area not located within a Utility Easement, when necessary for purposes of performing such maintenance, repair and/or replacement of Improvements or Exclusive Use Areas Operated by the Entering Party and which may require access from within the Entered Party's Unit.

2.20.1. ENTRY INTO EXTERIOR UNIT AREA

Except in the case of an Emergency, in which case no prior notice need be given, the Entering Party shall furnish the Other Party with at least *twenty-four (24) hours* written notice of its intent to enter the Other Party's Exterior Unit Area, which notice shall specify the purpose and scheduled or approximate time of such entry. The foregoing notwithstanding, no Entry Notice shall be required in order to effect entry and access to a Utility Easement located within an Exterior Unit Area. The Entering Party may *alternatively* communicate its request of entry by telephone or in person, and, in which case, an Entered Party may grant such entry to the Entering Party prior to the conclusion of the 24-hour written notice period. The Entering Party shall make every reasonable effort to schedule the time of entry, to effect entry and perform its work in a manner that respects the privacy of the persons residing within the Entered Party's Dwelling. In no event shall the Entering Party's right of entry, as conferred hereunder, be construed to permit the Entering Party to enter the Entered Party's Dwelling without the Entered Party's prior permission. Any damage caused by the Entering Party to the Entered Party's Improvements shall be an expense of the Entering Party. The Entering Party shall never be deemed guilty of trespass by reason of entry into the Entered Party's Exterior Unit Area for the purposes described in this Section.

2.20.2. ENTRY INTO INTERIOR UNIT AREA

In the case where an Entering Party must have access into an Entered Party's Interior Unit Area, the protocols described in above Section 2.20.1 shall similarly apply, with the following exceptions: (a) written notice shall be *forty-eight (48) hours*; and (b) Entry Notice shall be required in order to effect entry and access to any Utility Facility located within an Interior Unit Area, if any (permission for described entry shall not be unreasonably withheld).

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2.21. EXCLUSIVE EASEMENT

"Exclusive Easement(s)" shall mean and refer to an easement reserved and granted as an appurtenance to one Unit and/or Owner thereof, and/or to one or more Persons, for the exclusive use and/or benefit of such Unit or Owner thereof.

2.22. EXCLUSIVE EASEMENT AREA

"Exclusive Easement Area" shall mean and refer to those areas or Facilities within the Property over, under or through which an Exclusive Easement is located).

2.23. EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean and refer to those portions of the Property designated for the exclusive use of one or more, but fewer than all of the Owners of Condominium Units and which is or will be appurtenant, assigned and/or conveyed to such Condominium Unit as an Exclusive Easement. Exclusive Use Areas may include, but not be limited to certain internal and external utilities and Improvements, including, but not limited to, telephone, television, computer and other electrical wiring, plumbing, lighting, sewage and drainage systems or facilities; air-conditioning conduits and compressors, and other utility installations (conduit, pipe, wiring, etc.) if any of the foregoing are designed to exclusively serve a single Unit or Occupant thereof, but located outside the boundaries of such Unit (e.g. any utility lines running through a Building, which serve or are intended to serve just one Unit.

2.24. EXTERIOR UNIT AREA

"Exterior Unit Area" shall mean and refer to that portion of a Unit located outside of a Dwelling.

2.25. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

2.26. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association.

2.27. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a Mortgage or deed of trust which is first in priority of Recording or pursuant to a subordination agreement with the mortgagee/beneficiary of an earlier Recorded mortgage/deed of trust.

2.28. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee/Beneficiary of a First Mortgage/deed of trust.

2.29. FRACTIONAL INTEREST

"Fractional Interest" shall mean and refer to each *equal, one-half (1/2), undivided fractional interest* owned by an Owner as tenant-in common in the Common Area, which shall appurtenant to each Unit.

2.30. FINISH GRADE

"Finish Grade" shall mean and refer to the ground elevation of the Property, as reflected on the Plan.

2.31. GROUND ELEVATION.

"Ground Elevation" shall mean and refer to the finish grade of the Property.

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2.32. IMPROVEMENT

"Improvement" shall mean and refer to:

2.32.1. STRUCTURAL IMPROVEMENTS

All structures and appurtenances thereto of every type and kind, including, but not limited to, the Dwelling, accessory buildings; gazebos, windows, window frames, window tinting, doors, door frames, hardware, glass, screens, roofs, foundations, paintings or other surface applications of any exterior surfaces of any building or other structure, skylights, stairs, garages, parking spaces, walkways, driveways, road, fences, screens, screening walls, retaining walls, awnings, decks, patios, patio/deck covers, trellises, tents, umbrellas, signs, poles, masts, antennas, solar or wind powered energy systems or equipment, water softeners, heating or air-conditioning fixtures or equipment, swimming pools, hot spas, heating, ventilating, cooling and electrical systems; plumbing, water-lines, sewer pipes or lines, exterior wiring and other utility facilities, interiors of all building structures;

2.32.2. ELIMINATION OF IMPROVEMENTS

Demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

2.32.3. GRADING IMPROVEMENTS

The grading, excavation, filling or similar disturbance to the surface of the land, including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

2.32.4. LANDSCAPE IMPROVEMENTS

"Landscape Improvements" shall mean and refer, but not be limited to, (a) yards (b) landscaping – including flowers, grass, plants, trees, shrubs and bushes, including natural or artificial plantings, (c) the planting, clearing or removing landscaping, (e) landscape facilities – including landscape-focus lighting, real and/or faux stones, rocks, timbers, edgers, walls and boxes, pavers, planters, (f) irrigation facilities – including irrigation pipes, pipe heads, sprinklers, controllers, and (g) drainage facilities related to any of the foregoing

2.32.5. MODIFICATION

Any addition, alteration or modification to the any of the foregoing, including, without limitation, any change of material exterior appearance, color or texture, room partitions, structural alterations to any portion of a Dwelling.

2.33. INTERIOR UNIT AREA

"Interior Unit Area" shall mean and refer to that portion of a Unit located inside a Dwelling.

2.34. INVITEE

"Invitee" shall mean and refer to any person, who is not a Resident, whose presence within the Property is approved by or is at the request of a particular Owner and/or Resident, and shall include, but not limited to, an Owner's or a Resident's family, agents, guests, employees, licensees or service personnel.

2.35. MAP; PARCEL MAP.

"Map" or "Parcel Map" shall mean and refer to that certain Parcel Map filed in Office of the County Recorder of San Diego County, as more particularly described in EXHIBIT "A" hereto.

2.36. MEMBER.

"Member" shall mean and refer to a person entitled to membership in the Association as provided within this Declaration.

2.37. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Unit.

2.38. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

2.39. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

2.40. OPERATION; OPERATE; OPERATING

"Operation" (and its related word forms, which includes, but is not limited to: "Operate") shall mean and refer to the following with respect to Improvements in the Property:

(a) Periodically inspecting, policing, cleaning, sweeping, servicing and otherwise maintaining an Improvement in first-class, safe condition, state of repair and working order, and performing any repairs, replacements and other work for such purposes;

(b) Keeping, as applicable, the Improvements well-painted, weather-proofed and clean and clear of rubbish, debris, graffiti, unlawful obstructions, oil, grease and water, as well as removing the same;

(c) Making such additions, alterations, repairs, replacements and doing such other construction as is permitted under this Declaration to render the Improvements in compliance in all respects with the CC&RS and Applicable Law;

(d) Periodic inspection, maintenance, fertilization and replacement of any landscaping and related mechanisms and equipment, as may be necessary for the proper growth, operation and functioning thereof;

(e) Reasonable and normal maintenance, repair and replacement work to adequately maintain the Driveways and Walkways to permit all-weather access, including, but not limited to, filling of chuckholes, repairing cracks, repairing and resurfacing of the Driveways and Walkways, repairing and maintaining drainage structures associated with the Driveways and Walkways; removing oil and other stains, and such other work reasonably necessary or proper to repair and preserve the Driveways and Walkways and for all weather access purposes.

(f) Performing such other acts and work as reasonably incidental to any of the foregoing to maintain a clean, safe and sanitary condition necessary to preserve the attractive appearance, as the case may be, of the Project and each Unit, so to protect the values thereof;

(g) An Owner's or Occupant's performing the duties, obligations and responsibilities required by them under these CC&RS.

2.41. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of any Unit, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

2.42. PARTY WALL

"Party Wall" shall mean and refer to any fence or wall which separates one Unit from the other, whether such fence or wall is located (a) on the dividing line of the Units or (b) exclusively within the boundaries of one Unit. Party Wall shall include any demising wall which is between the Dwellings that is shared by both Dwellings and any other similar dividing partition; provided, however, any wall or structure that is not shared by both Dwellings – e.g. each of the two walls which comprise the division between the two Dwellings with an airspace between them, shall not constitute a Party Wall. The foregoing notwithstanding, any wall which is structurally integral to both Dwellings – that is, such that in the event it is removed or damaged, such removal or damage will impair the structural integrity of both Dwellings, shall be considered a Party Wall, unless the Owners agree to the contrary in writing, in any one instance or event.

2.43. PERSON

"Person" shall mean a natural individual, and/or any public or private corporation, general or limited partnership, limited liability company, trust, trustee and any other form of organization permitted by law, or one or more of them, and the heirs, executors, administrators, legal representatives, successors and assigns of any of them, as the context may require, including Owners, who has the legal right to hold title to or an interest in real property, including, but not limited to, a leasehold interest or an easement.

2.44. PROJECT.

"Project" shall mean and refer to the Property, including all Units and all structures and improvements erected or to be erected thereon.

2.45. PROPERTY.

"Property" shall mean and refer to that certain real property located in the City of San Diego, County of San Diego, California, more particularly described on Exhibit "A" attached hereto.

2.46. PURCHASER; RETAIL BUYER

"Purchaser" and/or "Retail Buyer" shall mean and refer to a Person who purchases a Condominium from Declarant for purposes of ownership and use thereof.

2.47. RECORD; RECORDED, RECORDATION

"Record," "Recorded" or "Recordation" shall mean and refer to, with respect to any document, the recordation of filing or such document in the Office of the San Diego County Recorder, California; the use of such term shall automatically imply that the parties shall provide properly authorized signatures and notarization thereof.

2.48. RESIDENT; OCCUPANT

"Resident" and/or "Occupant" shall mean and refer to: (a) an Owner; (b) a family member of an Owner, and/or (c) a tenant or lessee of an Owner, each of whom resides in the Dwelling owned by such Owner.

2.49. SEWER LATERAL SYSTEM

"Sewer Lateral System" shall mean and refer to that private sanitary sewer lateral system which is intended to carry waste from each Unit to the public sewer system.

2.50. SHARED IMPROVEMENT; SHARED FACILITY.

"Shared Facility" or "Shared Improvement" shall mean and refer, but not be limited to, any Improvement which is shared or intended to be shared by the Owners of both Units (e.g. monuments, signage, driveway, walkway, etc.).

2.51. SHARED UTILITY FACILITY(IES) SYSTEM(S).

Shared Utility Facility(ies)" and/or System(s)" shall mean and refer, but not be limited to: (a) Utility Facilities and/or Systems which are used by or are intended to be used by both Units and/or Occupants thereof; and (b) any other Utility Facility or System as may be otherwise agreed upon in writing by both Owners.

2.52. SHARED RESPONSIBILITIES

"Shared Responsibilities" shall mean and refer to the mutual responsibility and obligation of the Owners for the repair and/or replacement of Shared Improvements or Shared Utility Facilities.

2.53. UNIT.

"Unit" shall mean and refer to the separate interest in space in the Project which is not owned in common with the other Owners of the other Unit in the Project. Said Units are shown described on the Condominium Plan and are identified therein as a "Unit" and are numbered U-1 (U-1A is the parking area appurtenant to and a part of U-1) and U-2, for a total of two (2) Units. The boundaries of each Unit is the envelope of air space as shown and described in the Condominium Plan. Each Unit shall include the Dwelling and other Improvements located within its boundaries. Each Unit shall be a separate freehold estate.

2.54. UTILITY AREA; UTILITY EASEMENT.

"Utility Area" and/or "Utility Easement" shall mean and refer to those areas within the Property in which Utility Facilities and/or Systems are located and/or for which easements are reserved and granted to one Owner for purposes of installation, maintenance and use of such Utility Facilities and Systems.

2.55. UTILITY FACILITIES; UTILITY SYSTEMS

"Utility Facilities" and/or "Utility Systems" shall mean and refer to, but not be limited to, internal and external: telephone, electrical, television and computer wiring, cable, satellite dish and/or similar transmission devices and/or media available now or in the future; gas, water, sanitary sewer and drainage facilities; plumbing, lighting, heating and air conditioning facilities, including air conditioning compressors and condensers and all such other similar utilities.

2.56. WALKWAY.

"Walkway" shall mean and refer to those accessways (labeled on the Plan as "Access Easement") to and from the dedicated City street and the unnamed alley to the rear of the project which provide ingress, egress and access to and from the respective Dwellings and any Utility Easement Areas within a Unit. Walkway shall include exterior walkways, steps (as applicable), entrygates and walkway lighting, if any.

3. OWNERSHIP; PROPERTY RIGHTS**3.1. OWNERSHIP INTERESTS.**

Each Unit in the Project shall be conveyed to a Purchaser who shall thereupon become an Owner.

3.2. CONVEYANCE OF COMMON AREA

The Common Area shall be conveyed from Declarant to an Owner as an Fractional Interest appurtenant to such Owner's Unit Separate Interest, and thereafter owned as described in Section 2.29 above.

3.3. NO SEPARATION OF INTERESTS

No Owner may sell, assign, lease or convey such Owner's Fractional Interest in the Common Area separate and apart from his Unit, nor any portion of, or appurtenance to his Unit apart from the entire Unit.

3.4. PARTITION PROHIBITED; POWER OF ATTORNEY.

Each of the Owners of a Unit, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Property, except upon the showing that such partition is consistent with the requirements of CIVIL CODE §1359, or any successor statute. The Association is hereby granted an irrevocable power of attorney to sell the Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Property may be had pursuant to CIVIL CODE §1359. The power of attorney herein granted may be exercised upon the vote or written consent of One-Hundred Percent (100%) of the Owners who may authorize any two (2) Members of the Association to act on behalf of the Association to Record a certificate of exercise, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

3.5. CONSTRUCTION, RECONSTRUCTION, REMODELING.

(a) Each Owner shall have the right, subject to Applicable Law, to construct or reconstruct a Dwelling, or add on to an existing Dwelling. Only one (1) Dwelling may be constructed within each Unit. Any such construction, reconstruction or addition shall utilize the building "footprint" approved by the City in order to maintain a minimum distance between the Dwelling and the Unit boundaries (the lot lines and the dividing line(s) between Units as described on the Plan). Any deviation from the provisions of this Section and any construction, reconstruction or additions to a Dwelling shall conform to the existing design and color scheme must be authorized in writing by both Owners, whose authorization shall not unreasonably be withheld.

(b) Under City zoning regulations, a Lot must comply with the "Floor Area Ratio" ("FAR") requirements as to the size and location of the Dwelling(s) thereon. Each Owner shall have the right to the remaining buildable area under the FAR, if any, equal to percentage ratio of his Unit's square footage to the total square footage of both Units. Any Owner applying for approval to add additional square footage over and above that which now exists shall have the obligation to have the existing square footage of all structures on the lot calculated by a licensed architect, civil engineer or land surveyor, based on a formula acceptable to the City for this purpose. Each Owner will cooperate in such a way to allow this calculation to be made

3.6. RESTRICTIONS ON FURTHER SUBDIVISION.

No Unit shall be further subdivided nor shall less than all of any such Unit be conveyed by an Owner thereof; provided, however, that nothing in this Section shall be deemed to prevent an Owner, including Declarant, from adjusting the boundary of a Unit by amendment to the Plan.

3.7. ASSOCIATION.

(a) Each Owner automatically shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser. The transfer of title to a Unit or the sale of a Unit and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Unit to the transferee.

(b) The Association shall have one class of voting membership. Each membership entitles the holder to one (1) vote for each Unit of which he or she is record owner. If a Unit is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one (1) vote for each Unit.

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(c) It is not anticipated or contemplated that the association will ever require meetings of the membership. However, should a need arise (e.g. partition of Property, condemnation, eminent domain, etc.) for the members to act concertedly as the Association, a member may call such meeting or meetings as reasonably necessary therefor. The Association shall have the rights and may exercise the powers authorized under CIVIL CODE §1363(c) and described in this Declaration.

(d) The Association may, by a writing signed by both of its members and imposing such conditions as the members desire, designate one or more members to act on behalf of the Association in performing any of its duties, including, without limitation, the authority to execute contracts with third parties to provide services or goods for the Property. Any third party may conclusively rely on such writing unless and until notified in writing that the delegation has been revoked. The Association may revoke the delegation at any time with or without cause.

3.8. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS.

All work of repair or replacement required to be performed in the Project shall be performed only by reputable and experienced contractors, appropriately insured and licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified. If building or other permits are required for such work, then such permits shall be obtained before the work is commenced.

4. RESPONSIBILITY OF MAINTENANCE

4.1. OWNERS' RESPECTIVE MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES.

Except for those Improvements which are Shared Responsibilities, each Owner shall be responsible, at his or her sole cost and expense, for:

- (a) The Operation of all Improvements within his or her Unit;
- (b) The Operation of all Exclusive Use Areas appurtenant to such Owner's Unit;
- (c) Repair or Replacement of any Drainage Facility which is not a Shared Drainage Facility;
- (d) All *non*-Shared Utility Facilities; and
- (e) Pest control

- (1) For purposes of this Section, the terms used in this Section shall have the appropriate corresponding definitions: "***Pest(s)***" shall mean and refer to wood-destroying pests of organisms, rodents, vermin or insects, which invade the land or Improvements within a Unit; "***Pest Control***" shall mean and refer to the terms "structural pest control" or "pest control" as defined in **BUSINESS AND PROFESSIONS CODE §8505**; "***Pest Company***" shall mean and refer to either a "structural pest control operator" or a "registered company" as defined in as defined in **BUSINESS AND PROFESSIONS CODE §8506(a) and §8506.1**; "***Pest Infestation***" shall mean and refer to an infestation or infection of Pests of a Unit or Improvements therein; "***Pest Inspection***" shall mean and refer to an inspection of accessible areas of a Unit and the Improvements therein, conducted by a Pest Company to determine whether there is an Pest Infestation therein

- (2) In the event that a Pest Control Company which performs a Pest Inspection of either the interior or exterior of a Dwelling or a Unit, determines that in order to abate or remedy a Pest Infestation or infection found in one Building or Unit may require that Pest Treatment be performed to other Buildings in the other Unit, the Owner of such other Unit agrees that he or she shall promptly cause such Pest Treatment to be performed as determined by the Pest Company, at his or her own expense.

4.2. SHARED RESPONSIBILITIES.

The cost for the Operation of the following Improvements shall be Shared Responsibilities between both Owners – except in such instance(s) where any such repair and/or replacement is the result of damage caused by a specific Unit Owner, Occupant or Invitee thereof, in which case any such damage or requiring Repair or Replacement shall be a Unit Obligation thereof.

4.2.1. PARTY WALL.

A Party Wall, which includes shared fence or wall areas on a Unit demising line.

(A) PROTOCOL FOR REPAIR OR REPLACEMENT OF PARTY WALL.

In the event a Party Wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act or omission of one of the Owners or an Owner's Invitee, then both Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, as their Shared Responsibility, to such extent not covered by insurance.

(B) AESTHETIC AND COSMETIC APPEARANCE.

Notwithstanding anything herein to the contrary, each Owner shall be responsible to maintain at such Owner's cost, the aesthetic and cosmetic appearance and the condition of the surface finish (satisfactory to such Owner) of the side of the Party Wall that faces into or toward such Owner's Unit. Any such maintenance shall be performed, if at all, at such Owner's sole discretion and without notice to the other Owner.

(C) STRUCTURAL ALTERATION, MODIFICATION OR EXTENSION OF PARTY WALL.

In addition to satisfying the other requirements of this Declaration and any Applicable Law, any Owner proposing to modify, make additions, repair or rebuild a Party Wall in any manner which requires the structural: (a) alteration, (b) modification or (c) extension thereof or thereto, shall first obtain the written consent of the Owner of the other Unit. In considering any such structural change, the key criteria shall be assuring the aesthetic and cosmetic congruence of any such change with the Dwellings and other Improvements in the Project.

4.2.2. SEWER LATERAL SYSTEM

The shared portion of the Sewer Lateral System, if any;

4.2.3. SHARED DRAINAGE FACILITIES

The Shared Drainage Facilities maintenance of which shall include the periodic, but not less than once a month inspection by each Owner of the respective Area Drains located within each such Owner's Unit in order to determine whether (a) any readily removable debris has collected which might impair the flow of water run-off, in which case such Owner shall cause the immediate removal of such debris; or (b) an obstruction of a Shared Drainage Facility may require the

services of a professional service, in which case such Owner shall retain the services of such professional service, the cost of which shall be a Common Expense (e.g. the introduction of a high pressure jet of water or such other clean-out as may be recommended by such professional service).

4.2.4. OTHER

Such shared Utility Facilities or Systems or shared Improvements or services of whatsoever nature, as may from time to time be approved in writing by both Unit Owners.

4.3. PAYMENT FOR COSTS OF SHARED RESPONSIBILITIES.

4.3.1. ALLOCATION

Shared Responsibilities shall generally be allocated equally between the Owners; provided, however, if one or more Units or its respective Owner derives a greater benefit from a Shared Responsibility, the cost may be allocated proportionately, based upon the approximate percentage of benefit each Unit derives or is intended to derive; alternatively, the allocation may be as mutually agreed upon between the Owners. In the event of a Dispute between or among the Owners with respect to any such allocation, such Dispute shall be resolved pursuant to the provisions of Article 10 entitled "**Enforcement; Dispute Resolution.**"

4.3.2. PAYMENT.

Payment of the cost and expense of any specific Shared Responsibility from one Owner to the other, where one Owner has previously paid for or become indebted for any such Shared Responsibility, as the case may be, shall be due and payable upon demand, accompanied by a copy of all applicable documentation, including bills, receipts, contracts, or in accordance with such terms as may otherwise be mutually agreed upon between the two (2) Owners. Any Owner may request that any such payment of a Shared Responsibility be handled through a neutral escrow or fund control, as may be agreed upon by the Owners; provided, however, if no such agreement is achieved as to such neutral escrow or fund control, then any Owner may request that the then current President of the San Diego County Bar Association appoint a third party to serve as such escrow (stakeholder), which may be any escrow company duly licensed by the State of California, any attorney in San Diego County who is a member of the California Bar Association. Any payment not received within ten (10) days after demand therefor, shall be delinquent and the collection thereof may be enforced as an "Exigent Matter" in accordance with the enforcement and cost reimbursement provisions of Section 10.2 herein.

4.4. OWNER'S FAILURE TO OPERATE UNIT IMPROVEMENTS

In the event that an Owner (the "**Defaulting Owner**") fails to Operate any Unit Improvements as required by these CC&RS (which such failure may be referred to herein as a "**Defaulting Condition**") the other Owner ("**Remedial Owner**"), shall have the right to cure such Defaulting Condition, subject to the protocols and provisions set forth below:

4.4.1. PROTOCOLS

(a) The Remedial Owner shall give written notice (in the manner provided in these CC&RS for providing Notice) of such deficiency to the Defaulting Owner (the "**Notice of Deficiency**"), which shall specify in detail the condition which the Remedial Owner deems to be deficient, and what Maintenance, Repair or Replacement action is required to be taken. Such Notice of Deficiency shall only state one (1) condition (in the event that there are multiple conditions, each such condition must be stated on a separate Notice of Deficiency);

(b) The Defaulting Owner shall thereafter have fifteen (15) days to respond in writing to each such Notice of Deficiency, which response shall consist of one of two (2) response statement options only:

- (1) **Disagreement Statement:** a statement that the Defaulting Owner disagrees with the deficiency condition noted in the

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Remedial Owner's Notice of Deficiency in its entirety, noting in detail the reasons for such disagreement; or

- (2) **Agreement Statement:** a statement that the Defaulting Owner agrees with the deficiency condition described in the Remedial Owner's Notice of Deficiency;

In the event that the Defaulting Owner fails to respond within the fifteen (15) day period, the Remedial Owner shall have the right to effect Remedial Procedures as described hereinbelow in the Subsection entitled "**Remedial Action.**"

(c) **Disagreement with Notice of Deficiency:** Upon the Defaulting Owner's issuance of a Disagreement Statement, the Owners shall submit the deficiency matter ("Deficiency Matter") to alternative dispute resolution as provided in Article 9 herein.

(d) **Agreement with Notice of Deficiency:** In the event that the Defaulting Owner responds to the Remedial Owner with an Agreement Statement, such Agreement Statement shall include a schedule of action that the Defaulting Owner will undertake to remediate the Defaulting Condition, which shall include a *commencement date* of not more than thirty (30) days and a completion date of not more than ninety (90) days for such Maintenance, Repair or Replacement Remedial Action from the date of the Agreement Statement.

4.4.2. REMEDIAL ACTION

In the event that Defaulting Owner fails to either respond to a Notice of Deficiency or cure the Defaulting Condition as provided in Subsection 4.4.1(d) above, the Remedial Owner may, at its option, either: (a) cure or cause to be cured the Defaulting Condition; (b) contract with another party to cure such Defaulting Condition; or (c) seek any other remedy available at law or in equity, including without limitation, specific performance or an injunction to enforce the Defaulting Owner's Unit Obligation(s) pursuant to the provisions therefor contained in Article 9 herein. Any of the foregoing remedies may be employed at the option of the Remedial Owner, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

4.4.3. EXIGENT MATTERS

If the Remedial Owner determines that the Defaulting Condition constitutes an Exigent Matter, the Remedial Owner may take such action as described in Section 10.2 herein without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking action with respect to such Exigent Matter, the Remedial Owner shall give a Notice of Deficiency to the Defaulting Owner along with a detailed description of the action performed by the Remedial Owner.

4.4.4. REIMBURSEMENT.

If the Remedial Owner performs or causes to be performed such Remedial Action as described herein, the entire cost for such Remedial Action shall be an obligation of the Defaulting Owner and shall be reimbursed by such Defaulting Owner to the Remedial Owner or such third party contractor, with interest at an Applicable Rate.

4.5. ANNUAL BUDGET; ALLOCATION OF COMMON EXPENSES.

(a) It is not anticipated or contemplated that the Association will ever need to establish a budget. The following explanation is provided should an unanticipated event occur:

(b) The foregoing notwithstanding, should a need arise to establish a budget, the following protocol may be observed: during the last quarter of each calendar year, the Association may establish a budget for all Common Expenses, if any, for the coming new year. Each Owner shall be responsible for payment of their portion of the budgeted expenses, and any other Common Expenses.

Each of the various Common Expense budget items may be apportioned by one of the following methods as appropriate: (i) uniformly divided between the two Units; (ii) based upon the percentage of residential square feet of each Unit to the total of both Units; or (iii) as may be agreed upon in writing between both Owners.

4.6. TAXATION.

(a) Each Unit Owner shall be responsible for real and personal property taxes and assessments which are levied, assessed, imposed upon, confirmed or become due and payable with respect to such Owner's Unit, including any interest, penalties or delinquency charges thereon ("Property Tax(es)").

(b) In the event that any Property Tax at any time are not assessed individually against each Unit, each Owner shall execute such documents and take such actions as may be reasonably required to obtain separate assessments for Property Assessments for his or her Unit.

(c) In the event that any Property Tax is assessed against the Common Area or the entire Property, rather than against the individual Units, such Property Tax shall be divided and allocated between the Owners on the basis of the San Diego County Tax Assessor's valuation for each Unit in ratio to the total valuation for both Units. In the event that the County Tax Assessor has not yet assessed the individual Units, such assessment shall be based upon the percentage ratio of each Unit's surface area (i.e. earth, paving and area below any Dwelling or other Improvement thereon) square footage to the total square footage of both Units.

4.7. ENFORCEMENT; DISPUTE.

In the event an Owner fails to pay for any tax described in Section 4.4 above, the cost of any Shared Responsibility and/or any Common Expense for which such Owner is obligated or otherwise liable under this Declaration, or in the event of any dispute or controversy regarding any budget, Shared Responsibility or cost thereof, Common Expense or the allocation between the Owners of any of the foregoing, other than the enforcement of payment, enforcement and/or resolution of any such dispute shall be undertaken pursuant to the provisions therefor contained in Article 10 entitled "**Enforcement; Dispute Resolution**" herein.

4.8. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for any obligation under this Declaration, nor release the Unit owned by such Owner from any liens and charges hereof against such Unit by waiver of the use or enjoyment of any of the Common Area or by abandonment of such Owner's Unit.

5. USE RESTRICTIONS

5.1. SINGLE FAMILY USE.

(a) No Unit shall be occupied and used except for residential purposes by its Owner or Occupants, and no trade or business shall be conducted therein. The foregoing notwithstanding, a Unit may be used as a combined residence and executive or professional office by the Owner or Occupant thereof, so long as such use (i) does not interfere with the quiet enjoyment by other Owners, (ii) does not include unreasonable visitations by clients, (iii) is in compliance with the Zoning Codes of the City, and (iv) is otherwise authorized by Applicable Law.

(b) No tent, shack, trailer, basement, garage, outbuilding, or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

(c) No more than two (2) persons per bedroom plus one in any Unit shall be permitted as permanent residents. For purposes of this Section, a "permanent resident" means any person residing in a Unit more than 60 days out of any consecutive 12-month period.

(d) **No health care facilities** operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project, unless permitted by Applicable Law that preempts this restriction.

(e) **No family day care center for children** shall be permitted within the Project except as specifically authorized by HEALTH AND SAFETY CODE §1697.40 and other Applicable Law. The owner/operator of the day care center shall comply with all Applicable Law regarding the licensing and operating of a day care center and, in addition, shall: (i) name the other Owner as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center; (ii) defend, indemnify and hold the Owners harmless from any liability arising out of the existence and operation of the day care center; (iii) be completely responsible for children at all times while they are within the project; and (iv) cooperate with any insurance agent or carrier that requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

Any deviation from the provisions of this Section must be authorized in writing by both Unit Owners.

5.2. LEASE OF UNITS.

Any Owner who wishes to lease his or her Unit must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within a lease or not:

- (a) All leases must be in writing;
- (b) The lease must be for the entire Unit and Dwelling therein, and not merely portions thereof – that is, the lease shall include the both Dwelling and Garage within the boundaries of the Unit, and no such lease shall allow the tenant to lease one without the other. No tenant may sublease his or her Garage.
- (c) No lease shall be for a period of less than seven (7) days;
- (d) All leases shall be subject in all respects to the provisions of this Declaration. Each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner. Any lease shall specify that failure to abide by such provisions shall be a default under the agreement; and
- (e) All Owners who lease their Units shall promptly (not later than 10 days after entering into such lease) provide the other Owner with a copy of such lease as originally executed by the parties. In addition, all Owners leasing their Unit shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached.

5.3. INSURABILITY.

No Unit or Improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause the Property to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

5.4. ANIMAL REGULATIONS.

The only animals that may be raised, bred or kept in any Unit are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes in unreasonable quantities or sizes or in violation of the Declaration. As used in the Declaration, "*unreasonable quantities*" shall ordinarily mean more than two (2) pets per Unit; however, the Owners may mutually determine that a reasonable number in any instance may be more or less. No Owner shall maintain any animal which constitutes a nuisance to any other Owner. **No pit bulls, rottweilers, or other animals that may be considered by reasonable standards a threat to the**

safety of an Occupants shall be allowed under any circumstances in the Project. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. As a condition to being allowed to keep a dog in the Project, an Owner must provide evidence that such Owner's dog has attended and successfully completed obedience training classes from a professional dog trainer. Each Owner shall be liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept on the Project by such Owner, such Owner's Occupant or their respective Invitee. Each Owner shall clean up after such Owner's or Owner's Invitee's animals. Any Owner who keeps any animal, insect or reptile in the Project shall indemnify, defend and hold harmless the other Owner from any claim brought by any person against the Project or its Owners for personal injuries or property damage caused by such animals. Any Owner may cause any unleashed or untethered dog found within such Owner's Exterior Unit Area to be removed to a pound or animal shelter under the appropriate governmental jurisdiction by calling the appropriate authorities.

5.5. GARBAGE AND REFUSE DISPOSAL; STORAGE PILES.

All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste materials shall be kept in properly covered sanitary containers in accordance with this Section and Applicable Law. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Each Owner shall provide his or her own garbage can, with a lid, and shall be responsible for the cost of removal of his or her garbage from the Property by a trash disposal company, to the extent that such disposal is not provided by the City. All equipment, garbage cans and storage piles shall be kept on the side yard or in the garage area of the Dwelling, screened and/or concealed from view of the other Unit and the street.

5.6. OUTSIDE INSTALLATIONS AND ACTIONS

The following items and actions are prohibited with respect to areas outside of a Dwelling: clothes lines and/or the drying or laundering of clothes, water softeners, basketball hoops.

5.7. EXTERIOR DOMESTIC EQUIPMENT.

All toys, bicycles, appliances, movable barbecues, and similar domestic equipment shall, when not in use, be stored and/or not visible from neighboring property.

5.8. DRIVEWAYS AND WALKWAYS.

By acceptance of a Deed or other title conveying instrument to a Condominium, each Owner covenants and agrees that such Owner: (a) shall not alter the driveways and front yard walkways within such Owner's Unit; and (b) shall indemnify, defend, and hold Declarant and the Association, their respective officers, employees, contractors, and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorney's fees) arising from any breach of this provision.

5.9. CAR MAINTENANCE AND REPAIRS.

No car maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in the Property. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. No emergency or repair work shall be permitted in any continuous period of twenty-four (24) hours.

5.10. ANTENNAE.

(a) Owners are prohibited from installing any antennae on the exterior of a Unit for any purpose, except for an Authorized Antenna, which may be installed so long as the proposed location for such installation is reviewed by the other Owner before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The other Owner may require that the location of the Authorized Antenna be moved so long as such review by the other Owner does not: (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna,

(II) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or
 (III) preclude acceptable quality reception.

(b) An Owner shall neither (i) install an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Declaration, nor (ii) install an antenna other than an Authorized Antenna.

5.11. GARAGES.

When garages are not in use, garage doors shall be closed. Garages shall be used in such manner that garage doors may be closed.

5.12. EXTERIOR LIGHTING.

Any exterior lighting installed within a Unit shall be indirect or of such controlled focus and intensity as not to unreasonably disturb occupants of the other Units. Exterior lighting, including lights mounted on the front of the garage, the recessed light located on the arched entry to the courtyard, and landscape lighting must be kept on from dusk to dawn.

5.13. NO ALTERATIONS.

An Owner may not pierce or otherwise alter or repair bearing walls, ceilings, floors, roofs, other structural or utility bearing portions of the Unit or walls or fences enclosing any patios or decks without approval from the other Owner.

5.14. MODIFICATION TO YARD LIGHTING OR LANDSCAPING.

Yard lighting or landscaping design may not be altered from its most contemporaneous condition unless both Owners have approved any such alteration, which approval shall not be unreasonably withheld. The foregoing is not intended to prohibit Operation of such yard light or landscaping. The foregoing notwithstanding, Owners may alter low-voltage landscape lighting and landscaping in their respective yards as they may desire.

5.15. MODIFICATION OF EXTERIOR OF DWELLING.

The exterior design, color or color scheme of a Dwelling may not be altered from its most contemporaneous design and color unless both Owners have approved any such alteration in writing, which approval shall not be unreasonably withheld (it is intended that the exterior design and color scheme of both Dwellings be the same or similar, to assure and protect the enhancement, value, desirability and attractiveness of the Property for the benefit of both Owners. Thus *for example*, a change in color(s) of the exterior of one Dwelling, to slightly different hue(s) of the same color(s) (i.e. the use of the plural for word "color" is intended to account for different colors used in an existing color scheme for "trim," "off-set walls" of a Dwellings most contemporaneous design and color scheme) should be acceptable to the other Owner's granting his or her "approval not unreasonably withheld"; however, a significant change in color shade, tone or tint (darkening or lightening of a color by the addition of the color white or black) shall require the written approval of the other Owner; a change in color(s) to one(s) which may be different or complementary to the color(s) of the other Dwelling, shall always require the written approval of the other Owner.

5.16. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on in any Unit that would disturb the quiet enjoyment of such Unit by its Occupant, including, but not limited to the following:

(a) No odor shall be permitted to arise from any Unit which renders the Unit or any portion thereof unsanitary, unsightly or offensive to any portion of the Project or to its occupants.

(b) No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be unreasonably offensive or detrimental to any other part of the Project or to its occupants.

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(c) **No horns, whistles, bells or other sound devices** (other than security devices used exclusively for security purposes and sound speaker systems) which unreasonably disturb other Occupants shall be located, used or placed in any Unit/Dwelling. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that the devices do not produce annoying sound or conditions as a result of frequently occurring false alarms.

(d) **No wind chimes** may be installed or used within the front or rear Exterior Unit Areas. Wind chime use shall be limited to the side Exterior Unit Areas provided that they are not audible from the other Unit.

(e) **No barbecues** may be installed or used within the front (by the street) Exterior Unit Area of a Unit. Barbecue use shall be limited to the side and rear Exterior Unit Areas.

5.17. **INSIDE INSTALLATIONS.**

Nothing may be done in, on or to any Condominium which may impair the structural integrity of any building in the Project or which structurally alters any such building, except as otherwise expressly provided in this Declaration. No alteration, repair or replacement of wall coverings in a Dwelling which may diminish the effectiveness of the sound control engineering in the Dwelling may be made.

5.18. **OUTSIDE INSTALLATIONS.**

The following items are prohibited: (a) outside installations (either mobile or fixed), including hot tubs/spas, clotheslines, basketball goals, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Dwelling. Outdoor patio or lounge furniture and potted plants shall be restricted to areas that are not visible from the street or other Unit. Notwithstanding the foregoing, exterior clotheslines may be erected or maintained on the side yard of the Units, provided such clotheslines are not visible from the street or the either front yard of the Project.

6. UTILITIES; EASEMENTS

6.1. **OWNERS RIGHTS AND DUTIES.**

The rights and duties of the Owners and Occupants of Units within the Project with respect to Utility Facilities or Utility Easement shall be as follows:

(a) Whenever Utility Facilities are installed within the Property, which Utility Facilities or any one or portion thereof lie in or upon a Unit owned by other than the Owner of a Unit served by said Utility Facilities, the owners of any Unit served by said Utility Facilities shall subject to any required Entry Notice, have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Unit or to have the utility companies enter upon the Unit in or upon which said Utility Facilities, or any portion thereof, lie, to repair, replace and generally maintain said Utility Facilities as and when necessary.

(b) Whenever Utility Facilities are installed within the property which Utility Facilities serve more than one (1) Unit, the Owner of each Unit served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his or her Unit.

(c) The water, gas, electricity and other utilities to each Unit shall be under a separate meter, and each Owner shall be responsible for paying his or her own utility bills.

6.2. EASEMENTS FOR UTILITIES AND MAINTENANCE.

6.2.1. POWER TO CONVEY EASEMENTS.

(a) For so long as Declarant owns a Unit in the Project, or one (1) year from the first Close of Escrow, whichever is earlier, Declarant shall have the power to grant and convey in the name of and as attorney-in-fact for all Owners and the Association, such easements and rights-of-way as may hereafter be required or needed to service the Property or any portion thereof, in, on, over or under the Property, to any Owner or other party, including the State of California, the County, the City, cable television or computer-related company (collectively "public utilities or agencies," whether privately or publicly owned), for purposes of constructing, erecting, operating or maintaining lines, cables, wire, conduits or other devices for electricity, cable, satellite and/or master antenna television, power, telephone, computer and other purposes, as well as for public and private sewers, storm water drains and pipes, water systems, sprinkler systems, water, gas lines or pipes, and any similar public or quasi-public improvements or facilities.

(b) Each Purchaser, in accepting a deed to a Unit, expressly consents to such easements and rights of way and authorizes and appoints Declarant (as long as Declarant owns a Unit in the Property) and thereafter the Association, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or of way.

(c) Any easement granted to a public agency shall include the right of ingress and egress over the Property as necessary by personnel and/or vehicles of such public agency to properly install, maintain, repair, replace and otherwise service the relevant public utility improvements therein. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such public utility for maintenance or operation of any of the Property or other improvements located thereon or the repair, replacement or reconstruction thereof except as occasioned by such public utilities for which they are responsible. The foregoing notwithstanding, no such easement shall be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of his or her Unit(s), unless approved by all Owners in writing.

6.2.2. CERTAIN RECIPROCAL EASEMENTS.

Reciprocal easements shall exist between the Owners for the installation, repair, maintenance, and replacement of meters for water, gas and electricity, so that each Owner shall have access for himself or his agents to such meter(s), regardless of where located.

6.2.3. EASEMENTS TO PERFORM PROJECT DOCUMENT DUTIES.

Anything herein to the contrary notwithstanding, there is hereby reserved to Declarant, the Association, each Owner, and their respective duly authorized agents and representatives, such easements as may be necessary to perform their respective duties, obligations and rights as are set forth in this Declaration, and in any other Project Document.

6.3. EASEMENT FOR OPERATION OF DWELLING

Each Owner shall have a reciprocal non-exclusive easement over that portion of the other Owner's Unit and Dwelling for the limited purpose and only to the extent necessary for such Owner and/or its Invitees to Operate such Owner's Dwelling, including, but not limited to: (a) the fence between them establishing the division(s) between the two Dwellings, (b) the separate roofs, (c) a separate Drainage Facility, (d) a separate downspout and other Improvement which may require access through the other Owner's Unit and/or Dwelling for such Improvements proper Operation. Anything herein to the contrary notwithstanding, access to such non-exclusive easement shall observe the requirements of notice of Entry as provided herein.

6.4. RIGHTS OF ACCESS.

Notwithstanding the foregoing, unless an emergency occurs, the right of access upon a neighboring Unit shall not include entering within or under the Dwelling therein. Repair of any damage to

a "before work commenced" condition within a Unit shall be performed promptly by the Owner (or his agents) of the Unit who enters another Unit in order to effect such work upon his utility facilities. Non-emergency work shall require adequate Notice (for this Section, Notice shall constitute a period of not less than one full week) prior to its commencement.

6.5. ENCROACHMENT EASEMENTS.

If any portion of a Dwelling or improvement located in one Unit encroaches into another Unit due to minor engineering errors, settlement, shifting or any other cause, the Owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligation of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners. In the event a Dwelling or structure in a Unit airspace is partially or totally destroyed and then rebuilt or repaired, the Owners agree that minor encroachments shall be permitted and there shall be easements for maintenance of such encroachments so long as they shall exist.

6.6. DRAINAGE & SLOPES.

(a) Except in an Emergency, the Owner of any Unit shall not in any way interfere with (i) any established slopes within any portion of his or her Unit; and/or (ii) the established surface drainage pattern over his or her Unit from adjacent or adjoining Units, and such Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his and it is done in accordance with all applicable governmental codes and ordinances. For the purpose herein, "established surface drainage" and "established slopes" are defined as the respective drainage and slopes that existed at the time of the filing of the Notice of Completion (or similar instrument) relating to such Unit or Dwelling thereon (whichever is later), or if no such instrument exists, then at the time that the overall grading was completed for the Project, or other appropriate development increment in which the Unit is located.

6.7. ACCESS EASEMENTS.

Nonexclusive access easements are hereby reserved by Declarant in favor of (i) Unit U-2 over and upon that portion of Unit U-1, and Unit U-1 over and upon that portion of Unit U-2, as shown on the Plan by the designation "Access Easement" for purposes of pedestrian ingress, egress and access by the owner, occupants, guests and invitees of Units U-1 and U-2 to travel from their Unit to either the street and/or the unnamed alley to the southeast of the property, as applicable.

The parking area belonging to Unit U-1, shown and designated on the Plan as U-1A, is located within / surrounded by the boundaries of Unit U-2 and along the alley. The cost of utilities, insurance, maintenance and replacement of the U-1A parking area is the sole responsibility of the Owner of Unit U-1. The owner of Unit U-1A shall not have the right to attach anything to the Dwelling in Unit U-2 (Note: this does not mean that the Owner is prohibited from installing a garage door opener, shelving or cabinets for storage purposes which does not prevent the garage from being used to hold the number of vehicles it was designed for.

The Owner of Unit U-2 shall be obligated and responsible to maintain the components (e.g. structural, exterior walls, etc.) of the Dwelling which forms the U-1A parking area located within Unit U-2, including the maintenance and replacement of the roof and repainting the exterior thereof. The Owner of Unit U-1 shall be responsible for the maintenance and or replacement of any appurtenant door and window areas, as applicable, and the surface of the U-1A parking area.

OPTIONAL SECTION: The Owner of Unit U-1 shall be obligated to pay to the Owner of Unit U-2 an amount equal to ten percent (10%) of the reasonable cost of such maintenance and/or replacement, except where needed repair(s) and/or replacement is the result of damage caused by one of the Owners or such Owner's Invitees, in which case said Owner responsible for the damage shall be solely responsible for the costs of repair.

Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Section. Except as provided in Section 3.1.4 - **CONSTRUCTION, RECONSTRUCTION, REMODELING**, there shall be no obstructions whatsoever of the foregoing Access Easements, so to permit them to be used for the purposes intended herein. Provided, however, any encroachments of the nature described in the Section 6.5 entitled "**Encroachment Easements**" hereinabove shall not be deemed an obstruction for purposes herein, unless such obstruction prevents reasonable access.

Each Owner shall maintain or cause to be maintained that portion of the Access Easement located within the boundaries of his Unit in a neat and clean manner so to permit unobstructed access for the purposes intended herein. The foregoing is not intended to prohibit the occasional and temporary blockage of the Access Easement by the occasional parking of vehicles for such purposes as unloading groceries, delivery vehicles, moving vans, etc.

Notwithstanding the foregoing, the responsibility and costs incurred to repair any damage to the Access Easement caused by an Owner, or by any tenant, occupant, guest, invitee and/or contractor, shall be the sole responsibility of said Owner.

6.8. **COMMENCEMENT OF EASEMENTS.**

The easements reserved herein shall become effective upon the first Close of Escrow. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Section.

6.9. **VIEW OBSTRUCTIONS.**

Each Owner acknowledges that (a) there are no protected views in the Property, and no Unit is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, other Owners or owners of other property in the vicinity of the Project may impair the view from any Unit, and the Owners consent to such view impairment.

7. RIGHTS OF MORTGAGEES

7.1. **GENERAL.**

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Project Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

7.2. **NO RIGHT OF FIRST REFUSAL.**

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Unit can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Unit acquired by the Mortgagee.

7.3. **UNPAID DUES OR CHARGES.**

Where the Mortgagee of a first Mortgage of record or other purchaser of a Unit obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be

deemed to be common expenses collectible from all of the Units including such acquirer, his or her successors and assigns.

7.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless one-hundred percent (100%) of the First Mortgagees of Mortgages encumbering Units (based upon one (1) vote for each Mortgagee) have given their prior written approval:

(a) Seek, by act or omission, to abandon the Project or to terminate the Plan or this Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Area;

(b) Change the pro rata interest or obligations of any Unit for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;

(c) Partition or subdivide any Unit;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Property shall not be deemed a transfer within the meaning of these provisions;

(e) Use hazard insurance proceeds for losses to any portion of the Property for other than the repairs, replacement or reconstruction of the Property, except as may be provided by statute or upon substantial loss to the Units or Property, respectively; or

(f) Fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurance value thereof, based on current replacement cost.

7.5. PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other constituent documents shall give a Unit Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the Unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Areas.

7.6. NOTIFICATION TO MORTGAGEE.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Documents not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

7.7. NONCURABLE BREACH.

Any Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.

7.8. LOAN TO FACILITATE.

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

8. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**8.1. INDIVIDUAL OWNER INSURANCE.****8.1.1. PROPERTY/FIRE INSURANCE.**

Each Owner shall keep all Improvements located within such Owner's Unit, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage, insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in an amount of the maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies). The form and content of the insurance policy shall contain the following endorsements: (a) agreed amount; (b) inflation guard (when it can be obtained); and (c) a construction/building code endorsement, if there is a construction/building code provision that would require changes to undamaged portions of a Dwelling even when only part of the building is destroyed by an insured hazard.

8.1.2. OWNER LIABILITY INSURANCE.

Each Owner shall obtain and maintain, at the Owner's sole expense, a comprehensive general liability policy insuring the Owner and Occupants of such Owner's Unit and their respective family and Invitees against any liability incident to the ownership or use of the Unit, the term, amount and coverage of which shall satisfy the customary minimum requirements of a First Mortgagee imposed for this type of Project. If a First Mortgagee does not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar Units in the area.

The foregoing insurance shall name the other Owner (and mortgagees, if required by such mortgagees) as an additional insured thereunder and shall provide that the same may not be canceled without at least fifteen (15) days' prior written notice being given by the insurer to the other Owner and all insured mortgagees.

8.1.3. WAIVER OF SUBROGATION.

The foregoing described individually-carried insurance shall contain a "waiver of subrogation" by the carrier as to the Declarant (if applicable), the other Owner, and the Mortgagees of the insured Unit.

8.1.4. OTHER INSURANCE.

Each Owner may also obtain and maintain such other insurance as he or she considers necessary or advisable.

8.1.5. EVIDENCE OF INSURANCE.

If requested, each Owner shall deliver to the requesting other Owner, copies of such insurance required herein or certificates evidencing the existence and amounts of such insurance.

8.1.6. COVERAGE NOT AVAILABLE.

In the event any insurance policy, or any endorsement or provision thereof, required by this Section is for any reason not available, then the Owner shall obtain such other or substitute policy or endorsement as may be available, which provides, as nearly as possible, the coverage described above. Such Owner shall have a duty to notify the other Owner of any material adverse changes in insurance coverage.

8.2. ALTERNATIVE ASSOCIATION-MAINTAINED INSURANCE.

(a) Upon unanimous consent of the Owners, the Owners acting together or through the Association may obtain a master insurance policy for the Project in lieu of individual insurance policies and the expense therefor pro-rated between the Owners in accordance with the amounts and coverage attributable to their respective Units.

(b) Each Owner, in this instance, shall appoint the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

(c) Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its members and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

8.3. DAMAGE OR DESTRUCTION OF DWELLING.

(a) If a Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Dwelling to rebuild, repair or reconstruct such Dwelling in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty ("Prior Condition") or to remove any damaged structures from the Owner's Unit without unreasonable delay. To the extent not covered by insurance, each Owner shall separately be responsible for the cost and expense of such repair or reconstruction.

(b) In the event that Applicable Law in force at the time of repair or reconstruction does not permit the restoration of the Dwelling to its Prior Condition, and such Dwelling, by virtue of its damage is determined by Applicable Law to be uninhabitable, the Owner thereof shall either (i) replace such Dwelling in a manner that shall [a] conform to Applicable Law, and [b] be acceptable to (i.e. approved in writing by) both Owners; or, (ii) clear and level the remaining structures of the Dwelling, removing all wreckage, debris and remains thereof and leaving the ground in a clean condition.

(c) All work of repair or reconstruction required pursuant to this Section shall be performed only by reputable and experienced contractors, appropriately licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified. If building or other permits are required by Applicable Law for such work, then such permits shall be obtained before the work is commenced.

8.4. CONDEMNATION.

In the event of a taking by eminent domain of all or any part of a Unit, the award shall be disbursed to the Owner of said Unit subject to the rights of the Owner's mortgagees. If the taking is for all

of a Unit, the Unit Owner, after acceptance of the award therefor, and the Unit's Mortgagee, shall be divested of all interest in the Property.

9. DISCLOSURES

Because much of the information included in this Article has been obtained from other sources (e.g., governmental and other public agencies and public records) and is subject to change for reasons beyond the control of Declarant, Declarant cannot and do not guarantee the accuracy or completeness of any of the information in this Article.

9.1. NO REPRESENTATIONS OR WARRANTIES.

No representations or warranties, express or implied, have been given or made by Declarant or its agents in connection with the Property, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as expressly provided in this Declaration, or as provided by Declarant to the first Owner of each Condominium Unit.

9.2. SECURITY AND PRIVACY DISCLAIMER.

Declarant has not undertaken to provide any security or privacy for the Property or for any Person, personal property or either Unit in the Property. By accepting and recording a deed to a Unit in the Property, each Owner understands, acknowledges and agrees that, except as stated in this Declaration, that Declarant has not made any representations or warranties concerning the privacy or safety of Persons, personal property or Units in the Property.

9.3. INDEMNITY.

Declarant shall not be liable or responsible for any damage to Improvements constructed or modified by an Owner or that is the result of Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified, professional consultants.

9.4. PROPERTY LINES.

The boundaries of each Unit within the Property and Common Area are delineated on subdivision (tract) maps, lot line adjustments, parcel maps or Condominium Plan that are public records and are available at the office of the County Recorder.

9.5. COMPLIANCE WITH REQUIREMENTS REGARDING PROJECT STORM WATER POLLUTION.

Each Owner acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways (ocean), creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the Unit which is being purchased by Owner, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rainwater into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any storm water conveyance systems. Owner further acknowledges that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Unit into a storm drain system. Owners are encouraged to consult with the City, and other governmental authorities,

concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

(a) **Storm Water Pollution Prevention Best Management Practices.** All landscaping shall be maintained by the Owners in a manner that will prevent soil erosion and minimize sediment transport. To the extent that Declarant has installed any erosion protection devices (e.g., sandbags) the Owners shall not remove such devices unless and until all landscaping has been installed, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles within the Project shall be covered and closed at all times. The Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of such maintenance, if any, shall be treated as Common Expenses.

(b) **Liability to Declarant.** So long as Declarant owns any Unit within the Project, if an Owner is not in compliance with the provisions of this Section and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the applicable portion of the Project to correct such violation. Any Owner who violates the requirements of this Section shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

9.6. **NO WAIVER OF FUTURE APPROVALS.**

The Owners' approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring an Owner's approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

9.7. **MOLD AND MILDEW.**

Mold is a type of fungus which occurs naturally in the environment. Residential home construction is not, and cannot be designed to exclude mold spores. Mold growth requires moisture and this is the only mold growth factor that can be controlled in a residential setting. Moisture can occur not only from water intrusion, but also from indoor relative humidity. By minimizing moisture, an Owner can reduce or eliminate mold growth in the Owner's Unit. Therefore, each Owner agrees to regularly inspect its Unit for plumbing leaks, water accumulation near the foundation, water intrusion through windows, doors and roofs or any signs of mold. Owner agrees that if there is any water damage or water intrusion to Owner's Unit, Owner will take immediate action to prevent conditions which cause mold or mildew to develop.

10. ENFORCEMENT; DISPUTE RESOLUTION

Except for:

(a) an "*Exigent Matter*," an "*Escrow Related Matter*," or other matters such which are addressed in Section 10.3 herein,

(b) or (b) any "*Development Dispute*," which is addressed in Section 10.4 herein,

any claim, controversy, dispute, or cause of action which arises out of, or relate to this Declaration and/or the Property, or any tort cause of action related thereto, including any breach, interpretation, or enforcement thereof (collectively or individually referred to herein as a "*Dispute*"), which Dispute cannot be settled through direct informal discussions between the

Parties, such Dispute shall be subject to Alternative Dispute Resolution described in Section 10.2 below.

10.2. ALTERNATIVE DISPUTE RESOLUTION.

Except as provided in Section 10.3 below, Disputes shall be submitted first to mediation as described in Section 10.2.1 below. If any such Dispute(s) remains unresolved through mediation, then, second, through submission of such unresolved Dispute(s) to general judicial reference as described in Section 10.2.2 below.

10.2.1. MEDIATION.

The Owner(s) who desires to initiate resolution of a Dispute (the "**Claiming Party**") shall give written notice to the other Owner (the "**Responding Party**") pursuant to Section 11.6 herein entitled "**Service of Notice**," of the claim of Dispute, which writing shall describe the nature of the claim, the facts giving rise to the claim, the proposed remedy of the claim and the Claiming Party's desire to mediate (the "**Mediation Notice**"). Both the Claiming Party and the Responding Party (collectively, the "**Parties**") must make a good faith attempt to mediate the Dispute pursuant to this Section as follows:

(a) The Mediation Notice shall name a mediator. The Claiming Party shall be obligated to pay any fee to initiate mediation, but the cost and expense of the mediation, including any required traveling and other expenses of the mediator, and the expenses of any witnesses or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise. The cost and expense of witnesses for the respective Parties shall be paid by the Party producing such witnesses.

(b) The Responding Party shall have ten (10) days from the date that Notice is deemed served to object to the Claiming Party's choice of a mediator; such objection shall be made in writing and given to the Claiming Party pursuant to the *Service of Notice* provisions contained in Section 11.6 herein, whereupon the Parties shall request that either the American Arbitration Association or the then President of the San Diego County Bar Association pick a mediator from its panel within ten (10) days from the date of the Claiming Party's receipt of the Responding Party's objection.

(c) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(d) Within ten (10) days after the selection of the mediator, any Party who has not already done so, shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all Parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) to thirty (30) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the Parties mutually agree to extend the mediation period. The mediation shall be held in San Diego County or such other place as is mutually acceptable by the Parties.

(e) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement, whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the Parties.

(f) Persons other than the Parties, their representatives and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the

mediator. Confidential information disclosed to a mediator by the Parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(g) If there are any unresolved Disputes between the Parties through mediation, or if there are certain portions of a Dispute that remain unresolved, such unresolved Dispute or portion thereof, as the case may be, shall be submitted to and conclusively determined by general judicial reference described in Section 10.2.2 below.

10.2.2. JUDICIAL REFERENCE.

Any unresolved disputes under Section 10.2.1 above, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645.1 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise. The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (a) The proceedings shall be heard in the county in which the Project is located;
- (b) The referee shall be an attorney or retired judge with substantial experience in relevant real estate matters;
- (c) Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;
- (d) The referee may require one or more pre-hearing conferences;
- (e) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (f) The referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;
- (g) The referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties;
- (h) The parties shall waive jury trial of the proceedings;
- (i) A stenographic record of the hearing shall be made, provided, that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (j) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
- (k) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

10.3. EXCEPTIONS TO SECTION 10.2 ALTERNATIVE DISPUTE RESOLUTION.

The resolution or determination of the following issues and matters are exempt from the requirements of *Alternative Dispute Resolution* described in Section 10.2 above or *Development Dispute Resolution* described in Section 10.4 below:

10.3.1. SPECIFIC PROCEDURE.

An alternative or required enforcement procedure described by a particular clause or section within this Declaration.

10.3.2. ESCROW RELATED MATTERS.

Any dispute arising with a prospective purchaser which concerns or affects the *close of escrow* or matters concerning the close of escrow for the purchase of any Lot.

10.3.3. EXIGENT MATTERS.

(A) TYPES OF EXIGENT MATTERS.

An "*Exigent Matter*," which shall mean and refer to only the following:

- (1) an Emergency
- (2) any matter relating to the abatement of a nuisance
- (3) any enforcement procedure contained in a particular clause or section within this Declaration which is declared to be an Exigent Matter; or
- (4) an Owner's breach of payment of Common Expenses.

(B) REMEDY OR RESOLUTION OF A NON-EMERGENCY

EXIGENT MATTER.

An Owner (the "*Claiming Party*") who seeks to make a claim with respect to any non-Emergency Exigent Matter shall – following not less than ten (10) days' prior written notice to the Owner (the "*Responding Party*") against whom such Claiming Owner alleges a breach or default constituting an Exigent Matter – have the right to:

- (1) Seek injunctive relief to require the Defaulting Owner to perform a specific Exigent Matter (e.g. duty or obligation);
- (2) Seek compensation for damages arising or resulting from the failure of the Defaulting Owner to perform Exigent Matter;

(C) REMEDY OR RESOLUTION OF AN EMERGENCY

EXIGENT MATTER.

In the case of an Emergency, the Owner who seeks to remedy an Emergency (the "*Claiming Party*") shall have the right to:

- (1) Cause such action to be performed as may be deemed necessary to abate or remedy any such Emergency, in which event all sums expended by the Claiming Owner in causing such abatement or remedy to be performed shall become a demand obligation owed by the other Owner (the "*Responding Party*")

to the Claiming Owner, shall bear interest at the lesser of ten percent (10%) per annum or the maximum non-usurious rate permitted by law from the date expended by the Claiming Owner until repaid by the Responding Owner, and shall be subject to collection by suit in any court of competent jurisdiction; or

- (2) Exercise all rights or remedies otherwise available at law, in equity or by statute.

All rights and remedies shall be cumulative and not exclusive. In any legal or equitable proceeding for the enforcement of any of the duties or obligations of this Section, or for damages of the breach of any such duties or obligations, the losing party shall pay the attorneys' fees and courts costs of the prevailing party.

10.4. DEVELOPMENT DISPUTE RESOLUTION.

From and after the Close of Escrow, any action, claim or dispute by, between or among

(a) the Declarant, or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure, (individually, a "Declarant Party"; collectively, the "**Declarant Parties**");

(b) Declarant, and/or

(c) a Purchaser/Owner

(individually, a "**Party**"; collectively, the "**Parties**")

relating to, or arising out of the Project, the Declaration or any agreement between the (i) Declarant and the Declarant, (ii) the Declarant and a Purchaser/Owner, or (iii) the Declarant and a Purchaser/Owner (unless any such agreement specifies another form of dispute resolution), the sale of the Property, the use or condition of the Property or the design or construction of, or any condition on, or affecting the Project, including, but not limited to construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the construction, development, or condition of the Property or Project, where the amount in controversy is greater than \$25,000 or in which non-monetary relief is sought that could not have been granted by a Municipal Court in the State of California as of January 1, 1998, except for claims and actions set forth in Section 10.4.6 (collectively, "**Development Dispute(s)**"), shall be subject to the provisions set forth below.

10.4.1. NOTICE.

Any person with a Development Dispute claim ("**Claimant**") shall notify, pursuant to the provisions of the Section entitled "**Service of Notice; Notice**" herein, each applicable Declarant Party, Declarant and/or Owner, ("**Nominee**") in writing of such claim, which writing shall describe the nature of such claim and any proposed remedy ("**Claim Notice**").

10.4.2. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION.

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Nominee(s) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Development Dispute claim. At such meeting or at such other mutually-agreeable time, the Nominee(s) and their respective representatives shall have full access to any property that is subject to the Development Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Nominee(s), which rights shall continue until such time as the Development Dispute is

resolved as provided in this Section 10.4. The Parties to the Development Dispute shall negotiate in good faith in an attempt to resolve the claim. If a Nominee elects to take any corrective action, Nominee(s) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action.

10.4.3. CIVIL CODE §§1368.4, 1375, 1375.05 and 1375.1.

Nothing contained herein shall be deemed a waiver or limitation of the provisions of CIVIL CODE §§ 1368.4, 1375, 1375.05 and 1375.1. If the claim is subject to the provisions of CIVIL CODE §§1375, 1375.05 and 1375.1 as they may be amended from time to time, compliance with the procedures of these Sections shall satisfy the requirements of Sections 10.4.1 10.4.2 and 10.4.4, as applicable.

10.4.4. MEDIATION.

If the Parties to the Development Dispute cannot resolve the claim pursuant to the procedures described in Section 10.4.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") (except as such procedures are modified by the provisions of this Section 10.4.4) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Development Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Development Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 10.4.6 below, Purchaser/Owner covenants that Purchaser/Owner shall not commence any arbitration against the Seller Parties or Declarant without complying with the procedures described in this Section 10.4.4.

(A) POSITION MEMORANDA; PRE-MEDIATION

CONFERENCE.

Within ten (10) days of the selection of the mediator, each party to the Development Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Development Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Development Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties to the Development Dispute participating in the mediation.

(B) CONDUCT OF MEDIATION.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Development Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Development Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Development Dispute, provided the parties to the Development Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Development Dispute participating in the mediation.

(C) EXCLUSION AGREEMENT.

Prior to the commencement of the mediation session, the mediator and all parties to the Development Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code §1115 et seq. and any successor statute or laws in

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order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code §1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code §§1115 through 1128 shall also be applicable to such mediation process.

(D) PERSONS PERMITTED AT SESSIONS.

Persons other than the Parties to the Development Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the Parties to the Development Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such Parties' insurer in the mediation to the extent required under such parties' liability insurance policy. Confidential information disclosed to a mediator by such Parties or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(E) EXPENSES.

All expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Development Dispute participating in the mediation unless they agree otherwise. Each party to the Development Dispute participating the mediation shall bear its own attorneys' fees and other costs in connection with such mediation.

10.4.5. ARBITRATION.

Should either proceeding governed by CIVIL CODE §1375, or mediation pursuant to Section 10.4.4 above not be successful in resolving any Development Dispute, such Development Dispute shall be resolved by binding arbitration and pursuant to the rules of JAMS.

(a) The Parties expressly agree and acknowledge that this Section 10.4 involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Development Disputes shall be arbitrated, which arbitration shall be mandatory and binding, pursuant to the Federal Arbitration Act.

(b) In the event any Development Dispute is submitted to arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.

(c) The decision of the arbitrator shall be final and binding. The Parties expressly agree that an application to confirm, vacate, modify or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the Property is located.

(d) The participation by any Party in any judicial proceeding concerning this Section 10.4 or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 10.4.

(e) Except as otherwise agreed by the Parties or as required by Applicable Law, an Owner shall not be required to pay any fee of the arbitral forum or the arbitrator except to the extent of the costs that would be imposed upon the disputant if the Dispute had been filed

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as a suit in court. The arbitrator may not award against an Owner any expenses in excess of those that would be recoverable as costs if the Development Dispute had been litigated to final judgment in court.

(f) The arbitrator appointed to serve shall be a neutral and impartial individual.

(g) The venue of the arbitration shall be in the county where the property is located unless the parties agree in writing to another location.

(h) If any provision of this Section 10.4 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(i) Notice: By acceptance of a Deed or other conveyance to a Unit, each Owner agrees to have any Development Dispute decided by neutral arbitration in accordance with the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act, and the Parties are giving up any rights the Parties might possess to have the dispute litigated in a court or jury trial. By conveyance or acceptance of a deed conveying title to a Unit, Declarant, Purchase/Owner – and by execution of this Declaration, each give up their respective judicial rights to discovery and appeal, unless those rights are specifically included in this Section 10.4. If any Party refuses to submit to arbitration after agreeing to this provision, such Party may be compelled to arbitrate under the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act. The Parties' agreement to this arbitration provision is voluntary.

(j) In the event the foregoing arbitration provision is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, the Parties agree that all Development Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. The Parties each hereby waive and covenant not to assert their constitutional right to trial by jury of any disputes, including, but not limited to, Development Disputes relating to construction defects, misrepresentation or Seller's (or Declarant's) failure to disclose material facts. The Parties hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of the Parties or their successors and assigns.

10.4.6. EXCEPTIONS TO MEDIATION AND ARBITRATION; STATUTES OF LIMITATION.

The procedures set forth in this Section 10.4 shall apply only to *Development Disputes* and shall not apply to any action by, between or among the Parties (a) that is subject to CIVIL CODE §§ 1375, 1375.05 and 1375.1; (b) any *Exigent Matter* or other matter or issue described in Section 10.3 above, or (c) any Dispute described in Section 10.2 herein. Nothing in this Section 10.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps in prosecuting the action until it has complied with the procedures described in Sections 10.4.4 or 10.4.5 above.

10.4.7. SURVIVAL; SUCCESSORS AND ASSIGNS.

The rights and obligations of the parties pursuant to this Section 10.4 shall survive the Close of Escrow. This Section 10.4 and the rights, duties and obligations of the Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

10.5. FAILURE TO ENFORCE.

Failure by any Owner, including Declarant, to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

10.6. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Unit within the Project is hereby declared to be a violation of this Declaration and subject to the enforcement procedures herein set forth.

10.7. GOVERNING LAW.

This Declaration shall be governed by and construed under the laws of the State of California, County of San Diego.

11. GENERAL PROVISIONS**11.1. INVALIDITY OF ANY PROVISION.**

Should any provision or portion hereof be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

11.2. AMENDMENTS.

Prior to close of escrow on the sale of the first Unit in the Property, Declarant may amend this Declaration. After the close of escrow on the first Unit, this Declaration may be amended at any time and from time to time by an instrument duly recorded in the Office of the San Diego County Recorder bearing the acknowledged signatures of One-Hundred Percent (100%) of the Unit Owners.

11.3. INCORPORATION.

The Association, an unincorporated association, may be incorporated upon the vote or written assent of one hundred percent (100%) of the voting power thereof, whereafter, the approving members shall be authorized to execute appropriate Articles of Incorporation and to file the same with the Secretary of State, certifying that such votes or written consent have been obtained.

11.4. TERM AND EXTENSION OF DECLARATION.

The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by any Owner of the property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by all of the then Owners of the Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

11.5. OWNER'S COMPLIANCE.

Each Owner or Occupant of a Unit shall comply with the provisions of this Declaration, as lawfully amended from time to time. Failure to comply with any such provisions shall be grounds for enforcement thereof pursuant to Article 9 herein.

11.6. SERVICE OF NOTICE; NOTICE.

In each instance in which notice or demand is to be given to the Owner and/or Occupant, the same shall be in writing and may be served in one or more of the following manners:

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11.6.1. PERSONAL SERVICE; HAND DELIVERY.

Personal service of a notice or demand to the Owner or to any one or more co-Owners; to any general partner of a partnership which is an Owner; to the manager of a limited liability company which is an Owner; and/or to any officer or agent for service of process of a corporation which is an Owner, shall be deemed delivered to such Owner, co-Owners, partnership, limited liability company or corporation, as the case may be.

11.6.2. SERVICE BY MAIL, EXPRESS MAIL.

Service by First Class U.S. Mail or by Express Mail must be deposited in a post office, mailbox, subpost office, substation or mail chute or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with proper postage paid, addressed to the Owner at the most recent address furnished by such Owner to the other Owner, or, if no such address shall have been furnished then to the street address of such Owner's Lot.

11.6.3. COMPLETION OF SERVICE.

Any notice or demand deposited with the U.S. Postal Service (a) by First Class U.S. Mail shall be deemed delivered on the third day after such deposit; and, (b) by Express Mail shall be deemed delivered on the second day after such deposit.

11.7. SINGULAR INCLUDES PLURAL.

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

11.8. LIBERAL CONSTRUCTION.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience and reference only and shall not be considered or referred to in resolving questions or interpretation or construction.

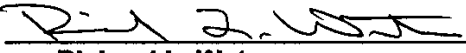
11.9. EASEMENTS RESERVED AND GRANTED.

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

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IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on 3rd ~~June~~ September 2008

DECLARANT:

By: 
Richard L. Waters

(Please Attach Proper Notary Certificates of Acknowledgment)

Signature Page

ALL PURPOSE ACKNOWLEDGEMENT

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STATE OF CALIFORNIA }

COUNTY OF SAN DIEGO }

On SEP 12, 2008 before me, MARIA ESTRELLADO NEPOMUCENO, NOTARY PUBLIC
(Insert name and title of the officer)

personally appeared RICHARD LEE WATERS

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

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

WITNESS my hand and official seal.



Signature Maria Nepomuceno

(This area for official notarial seal)

3395

EXHIBIT "A" LEGAL DESCRIPTION

**LOT 41 IN BLOCK 7 OF OCEAN BEACH, IN THE CITY OF SAN DIEGO,
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP
THEREOF NO. 279, FILED IN THE OFFICE OF THE COUNTY RECORDER ON
MAY 28, 1887.**

**4563 & 4565 NARRAGANSETT AVENUE
DECLARATION**

Exhibit "A"

LEGAL DESCRIPTION

3396

PROPOSED
BUDGET FOR
4563 & 4565 NARRAGANSETT AVENUE
CONDOMINIUMS

Declarant does not contemplate any shared expenses between the two (2) Unit Owners. All utilities, insurance, maintenance and management charges (if any) shall be paid individually by each Owner as incurred. Therefore, no operating or maintenance assessments have been projected or levied! Should the Owners decide at some future date, for whatever reason, that they wish or need to join together for payment of an expense(s), they shall create an appropriate budget at that time.

For additional clarification of the maintenance responsibilities, please refer to the Declaration of Restrictions Sections entitled Owners Responsibilities and Joint Responsibilities.

The California Department of Real Estate ("DRE") publishes the Operating Cost Manual for Homeowners Associations to assist Common Interest Developments with the creation and revision of such budgets. Copies can be obtained at a nominal charge directly from the DRE.