CC&Rs (Required Civil Code Sec. 4525)
The Austin Owners Association

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP OF THE AUSTIN SAN FRANCISCO, CALIFORNIA

THE LIMITED WARRANTY REFERENCED IN THIS DECLARATION CONTAINS PROVISIONS FOR JUDICIAL REFERENCE AND BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. BINDING ARBITRATION AND JUDICIAL REFERENCE INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY, YOU MUST READ THE ARBITRATION AND JUDICIAL REFERENCE PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF
THE AUSTIN

This Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Austin, San Francisco, California is made on the date hereinafter set forth by the undersigned (the "Declarant") and is made with specific reference to the following facts:

A. Declarant is the owner of that certain tract of land located in the City and County of San Francisco, State of California, described on Exhibit A hereto, and commonly known as The Austin (the "Property"). The Property is more particularly described on that certain subdivision map entitled Final Map No. 8883 (the "Map"), recorded on September 13, 2017, in Condominium Map Book 132, at Pages 1446 through 146, inclusive, in the Official Records of the City and County of San Francisco, State of California (the "Official Records").

B. The Property is further shown and described on that certain condominium plan entitled "Mixed-Use Condominium Plan for The Austin, San Francisco, California", which was recorded on [OCTOBER 18], 20[17], as Instrument No. [2017-K527157] in the Official Records (the "Condominium Plan").

C. There is located upon the Property one (1) multi-story building containing one hundred (100) residential units and three (3) commercial units together with certain appurtenances.

D. Declarant intends to establish within the Property a mixed-use residential and commercial "condominium project," as defined in Section 4125 of the California Civil Code, to subdivide the Property as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code, and to impose mutually beneficial restrictions under a general plan of improvement and development for the benefit of all the condominiums created pursuant to the Davis-Stirling Common Interest Development Act (Civil Code Section 4000 et seq.) (the "Davis-Stirling Act"), which provides that a condominium shall consist of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit.

E. Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the airspace contained in each unit, and co-ownership interest as a tenant in common with the other individual owners, as hereafter set forth, of the remaining portions of the Development, as hereinafter defined. The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Common Area.

NOW, THEREFORE, Declarant hereby declares that the herein above described Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions, easements, servitudes and liens all of which are declared and agreed to be in furtherance of a plan for condominium ownership as described in the Davis-Stirling Act for the subdivision, improvement, protection, maintenance and sale of condominiums within or upon the Development and all of which are declared and agreed to be for the purpose of enhancing and protecting the value and attractiveness of the Development and every part thereof. All of such limitations, covenants, conditions, restrictions, easements, servitudes and liens shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and

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assigns and all parties having or acquiring any right, title or interest in or to any part of the Development. Declarant further declares that it is the Declarant's express intent that this Declaration satisfy the requirements of the Davis-Stirling Act.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions.

"Annual Assessment" shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 4.3.

"Architectural Control Committee" shall mean and refer to the committee by that name established pursuant to this Declaration and Article XI of the Bylaws, as further described in Section 7.27 of this Declaration.

"Articles" shall mean and refer to the Articles of Incorporation of The Austin Owners Association, as amended from time to time.

"Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, operating and managing the Development which is to be paid by each Owner as determined by the Association in accordance with this Declaration.

"Association" shall mean and refer to The Austin Owners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.

"Association Rules" or "Rules" shall mean and refer to the rules and regulations governing the use and enjoyment of the Common Area which shall be adopted by the Board from time to time.

"Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

"BRE" means the California Bureau of Real Estate.

"Budget" or "Association Budget" shall mean and refer to the pro forma operating budget prepared by the Board pursuant to Article 4 of this Declaration and applicable provisions of the Bylaws.

"Bylaws" shall mean and refer to the Bylaws of The Austin Owners Association, as amended from time to time.

"City" shall mean and refer to the City and County of San Francisco, State of California.

"Commercial Unit" shall mean any Unit designated for commercial use, as shown on the Condominium Plan, and as further described in Section 7.2 of this Declaration.

"Common Area" shall mean and refer to the Property and all improvements located thereon excepting therefrom the Units as shown on the Condominium Plan, as further described in Section 2.2(b) of this Declaration.

"Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Development and any reserves for such purposes as found and determined by the Board to be reasonable

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together with all other sums designated common expenses by or pursuant to the Governing Documents. Reference is made to Article 4 of this Declaration for further details.

"Common Interest" shall mean and refer to the proportionate undivided interest in the Common Area which is appurtenant to each Unit as set forth in this Declaration.

"Condominium" shall mean and refer to an estate in real property as defined in California Civil Code Sections 783 and 4125, consisting of an undivided interest as tenant in common in all or any portion of the Common Area together with a separate fee interest in a Unit and any other separate interests in the Development as may be described in this Declaration, in the Condominium Plan or in the deed conveying the Condominium.

"Condominium Building" or "Building" shall mean and refer to a structure containing Units and related improvements in the Development. There is one (1) Condominium Building within the Development.

"Condominium Plan" shall mean and refer to the diagrammatic floor plans depicting all Units located in the Development, which identifies each Unit and establishes its dimensions pursuant to Civil Code Sections 4120 and 4285, as further described and shown on the "Mixed-Use Condominium Plan for The Austin, San Francisco, California" which was recorded on [OCTOBER 18], 20[17], as Instrument No. [2017-K527157] in the Official Records, or as shown and described on any amendments or supplements thereto.

"CPI" shall mean and refer to the Consumer Price Index (1982/84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco/Oakland area, or any successor entity thereto.

"Davis-Stirling Act" shall mean and refer to the Davis-Stirling Common Interest Development Act, codified in California Civil Code Section 4000 et seq.

"Declarant" shall mean and refer to the undersigned and such successors and assigns as the undersigned may designate pursuant to Section 11.5, or as may be otherwise designated pursuant to Section 11.5.

"Declarant Parties" or "Declarant Party" shall mean and refer to Declarant and its current and future affiliates, and the current and future agents, employees, directors, officers, members, managers, partners, trustees, trust beneficiaries, representative contractors and/or subcontractors, of Declarant.

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Austin, and any amendments, modifications or supplements hereto.

"Development" shall mean and refer to the Property together with all structures and improvements now or hereafter existing or erected thereon and all property, real or personal, intended for or used in connection therewith.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.

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"Eligible Mortgagee" shall mean and refer to a Mortgagee of a First Mortgage who requests notice of certain matters from the Association in accordance with Section 8.2.

"Exclusive Use Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of an Owner or Owners as set forth in Section 2.2(c) of this Declaration, and shall constitute "exclusive use common area" as defined in California Civil Code Section 4145, and shall include those areas described as Exclusive Use Common Area in Section 2.2(c) of this Declaration. In addition to those portions of the Common Area set aside as Exclusive Use Common Area pursuant to Section 2.2(c) of this Declaration, the following portions of the Common Area designated to serve such Owner's Unit exclusively shall be Exclusive Use Common Area: screens, windows, gates, exterior doors leading exclusively to a Unit, door frames and hardware incident thereto for doors leading exclusively to a Unit, any exterior treatment installed by an Owner pursuant to Association approval, and internal and external telephone wiring or other telecommunication, internet, television, utility, water or sewer Line designed to serve a single Unit but located outside the boundaries of the Unit. The Association, acting on behalf of all Owners, may reserve to an Owner(s), in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title), Exclusive Use Common Area for any purpose not inconsistent with the rights of other Owners under this Declaration.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation, or any successor entity thereto.

"First Mortgage" shall mean and refer to any mortgage or deed of trust which has first priority over all other mortgages or deeds of trust, if any, which encumber, in whole or in part, the same Condominium. For purposes of this definition, the fact that the lien of a First Mortgage is inferior to mechanics liens, tax liens, easements and similar limited interests held by government entities, public utilities and the like does not deprive such lien of "first priority" as such term is used herein.

"First Mortgagee" shall mean and refer to any holder of a First Mortgage.

"FNMA" shall mean and refer to the Federal National Mortgage Association, or any successor entity thereto.

"Fund" shall have the meaning set forth in Section 4.23 hereof.

"Governing Documents" shall mean and refer to this Declaration, including the exhibits attached hereto, the Articles, the Bylaws, the Limited Warranty and any Association Rules as may be established, as any of the foregoing may be amended or supplemented from time to time.

"Including" shall mean "including, without limitation."

"Individual Special Assessment" shall mean and refer to a charge against a particular Condominium made for the purpose of obtaining reimbursement of certain expenditures of the Association pursuant to Section 4.7.

"Invitee" shall mean and refer to any person whose presence in the Development is approved by or is at the request of a particular Owner or Occupant of a Unit, including, without limitation, tenants and the family, guests, employees, agents, contractors, customers or licensees of Unit Owners or Occupants.

"Limited Warranty" shall mean and refer to the Limited Warranty for The Austin provided by Declarant to each Owner and the Association, attached to this Declaration as Exhibit C.

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"Line" or "Lines", when used in a context pertaining to a utility service or function, shall mean and refer to wires, cables, pipes, conduits and ducts.

"Maintain" or "Maintenance" whether capitalized or not, shall mean and refer to "maintain, repair and replace" and "maintenance, repair and replacement," respectively, and shall include, without limitation, taking all actions reasonably necessary to comply with (i) any maintenance manual applicable to an Owner or the Association, (ii) any warranty or limited warranty provided to an owner or the Association, (iii) any manufacturer's warranty or manual provided to an owner or the Association, (iv) the Limited Warranty, and (v) commonly accepted maintenance practices of a prudent Owner or Association; provided, however, that maintain or maintenance shall not include repair and replacement where the context or specific language of this Declaration provides another meaning.

"Map" shall mean and refer to the recorded final subdivision map for the Property as described in Recital A of this Declaration, and shall also include any amendment thereto. "Map" shall also mean and refer to any subsequently amended parcel maps or final maps for the Property.

"Materially Damaged" shall mean and refer to any damage for which the cost of repair or reconstruction, as determined by bids solicited and obtained from at least two (2) licensed contractors selected by the Board, is equal to or greater than One Million Dollars ($1,000,000.00) as adjusted by a fraction whose numerator is the CPI last published as of the date of such damage or destruction and whose denominator is the CPI last published as of the date of recordation of this Declaration.

"Member" shall mean and refer to each Owner holding a membership in the Association as herein provided.

"Mortgage" shall mean and refer to a mortgage or a deed of trust encumbering a Condominium.

"Mortgagee" shall mean and refer to a beneficiary of, or the holder of, a beneficial interest in a deed of trust as well as a mortgagee.

"Mortgagor" shall mean and refer to a Person who encumbers their Condominium with a Mortgage or deed of trust.

"Occupant" shall mean and refer to a Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative.

"Owner" or "Owners" shall mean and refer to the record holder or, if more than one, holders of title of a Condominium in the Development. This shall include any Person holding a fee simple title to any Condominium, including Declarant, but shall exclude certain contract sellers and Persons having any interest merely as security for the performance of an obligation. If a Condominium is sold in a recorded "real property sales contract", as defined in Section 2985 of the California Civil Code, to a purchaser who resides in the Unit, the resident purchaser (rather than the contract seller who is the fee owner) shall be considered the Owner so long as that person resides in the Unit as a contract purchaser.

"Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee or other legal entity.

"Property" shall have the meaning ascribed thereto in Recital A of this Declaration, and shall include all of the real property shown on the Map, together with all structures and improvements now or hereafter existing or erected thereon.

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"Public Report" shall mean and refer the official document and permit issued pursuant to the Subdivided Lands Act (Business & Professions Code §§ 11000 et seq.) by the California Bureau of Real Estate authorizing the offering of the Condominiums for sale to the public.

"Residential Unit" or "Residential Units" shall mean and refer to any Unit designated for residential use, as shown on the Condominium Plan and as further described in Section 7.1 of this Declaration.

"Special Assessment" shall mean and refer to an Assessment against all Units in the Development which is levied pursuant to Section 4.5.

"Supplementary Declaration" shall mean a declaration of covenants, conditions and restrictions, or similar instrument, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property and thereafter by the Association to do any or all of the following: (a) make modifications or adjustments to the description of the Property to reflect Declarant's development plan or any lot line adjustments, parcel maps and final subdivision maps and/or conditions or requirements imposed by governmental agencies, (b) ideutify areas referenced in this Declaration to be maintained by the Association or Owners and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner, (c) make such other complementary additions and/or modifications necessary to reflect the different character of improvements on the Property, (d) conform this Declaration or any previously recorded Supplementary Declarations to applicable laws or any conditions of approval imposed by any governmental agency or governmental entitlements, (e) conform this Declaration and other Governing Documents to the requirements of any state or federal agencies or institutional lenders, and/or (f) make corrections to the provisions of this Declaration or any previously recorded Supplementary Declaration.

"Unit" shall mean and refer to the elements of a Condominium which are not owned in common with all Owners or by the Association, the boundaries of which are shown and more particularly described in the Condominium Plan, in deeds conveying Units and in this Declaration, as further described in Section 2.2(a) of this Declaration.

"Unit Designation" shall mean and refer to the number, letter or combination thereof or other official designation of each of the Units as shown on the Condominium Plan.

ARTICLE 2

DESCRIPTION OF DEVELOPMENT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

Section 2.1 Description of Development. The Development consists of the Property, together with the Condominium Building and all other improvements located thereon. As of the date of this Declaration, the Development contains one hundred (100) residential condominium units and three (3) commercial condominium units. Reference is hereby made to the Condominium Plan for further details concerning the Development.

Section 2.2 Division of the Development Areas. The Development is divided as follows:

(a) **Units.** Each of the Units, as separately shown, numbered and designated on the Condominium Plan, consists of the space bounded by and contained within the following boundaries. The upper boundary shall be the unfinished surface of the bottom of the ceiling and the lower boundary shall be the unfinished surface of the top of the floor. The side boundaries shall be as follows: (i) exterior

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perimeter walls: the outside finish of exterior perimeter walls and center of glazing; (ii) demising walls between Units: the center line of internal air gap between demising walls; (iii) demising wall to the corridor/hallway: outside face of corridor/hallway wall; (iv) demising walls to Common Area stairwells: center line of internal air gap between studs. Pursuant to the definition of Unit and its boundaries described above, the area of a Unit shown on the Condominium Plan includes airspace inside the wall voids, as well as portions of the structural components, walls, columns and infrastructure of the Condominium Building and building systems and utilities that serve other Units and the Common Area. A Unit therefore includes within its boundaries certain areas that are not part of the usable and occupiable space of the Unit. A Unit also includes portions of the structural components and infrastructure of the Condominium Building, as well as building systems and utilities that serve other Units and the Common Area. The area of a Unit as described above and as shown of the Condominium Plan may also include plumbing and mechanical voids and shafts within its boundaries; provided, however, that such plumbing and mechanical voids and shafts and related Lines and improvements serving more than one Unit or serving the Common Area shall be subject to the control of the Association. Interior paint, paper, paneling, wall boards, sheet rock, outlets, stain, tile, carpet, hardwood floors and other finishes are considered part of the Unit. Each Unit includes the portions of the Condominium Building in which the Unit is located so described as well as the airspace so encompassed. The Unit does not include those areas and those things which are herein defined as "Common Area" even if such areas and things are located within the boundaries of the Unit as shown on the Condominium Plan.

In addition, each Unit includes any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof wherever located, which are part of a discrete and complete system intended to serve only such Unit. A Unit does not include, however, any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof that may be located within the airspace or boundaries of a Unit but serve two or more Units or the Common Area. A Unit does not include any bearing wall, beam, column or other structural member necessary to the support or adequate rigidity of any portion of the Common Area or any other Unit even if such item is located within the interior airspace or boundaries of the Unit as described above or shown on the Condominium Plan, except that any unfinished surface of such bearing wall, beam column or structural member which faces the interior of a Unit shall be a part of such Unit. Even though certain areas, components and systems are located within the boundaries of a Unit as described above and as shown on the Condominium Plan, such areas, components and systems are not under the control of the Unit Owner, and restrictions apply to such areas. Any structural components and infrastructure of the Condominium Building, as well as building systems and utilities that serve other Units and the Common Area, that are located within the boundaries of a Unit as described in this Section 2.2(a) above, shall be subject to the control of the Association and may not be altered or modified in any way by a Unit Owner except in accordance with the architectural control provisions of Section 7.27.

Each Unit is subject to such encroachments as are contained in the Condominium Building in which the Unit is located whether the same now exists or may be later caused or created in any manner referred to in Section 6.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial accordance with the original plans and specifications therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in such deed or plan, regardless of settlement or lateral movement of the Condominium Building in which the Unit is located and regardless of minor variance between the boundaries shown on the plan or deed and those of that Condominium Building. Unless otherwise specified in this Declaration, areas within a dropped ceiling that contain utility facilities that serve two or more Units are Common Area and not part of the Unit. An Owner of adjacent Residential Units shall have an easement to connect

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such adjacent Units, subject, however, to the terms and conditions of Sections 7.10, 7.15 and 7.27 of this Declaration.

(b) Common Area. The Common Area shall consist of the entire Development excluding the Units, and may include, without limitation: land; landscaping (including any garden areas); garage areas; parking areas; bicycle parking areas; elevators; lobby; trash rooms; bearing walls; roof terraces, exterior walls; columns; beams; sub-floors; unfinished floors; roofs; foundations; stairways not located within a Unit; corridors, walkways and hallways which provide access to Units and other Common Areas; life safety equipment (not located within a Unit); those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations lying within the Development or contained within and immediately surrounded by that portion of any structure or space which is defined herein as a part of the Common Area (as required to provide power, light, telephone, cable television, gas, water, sewage, drainage, heat and air conditioning service) except that any air heating, air conditioning, HVAC and water heating equipment and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be a part of such Unit; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Unit; and any common central radio and/or television antenna system, cable television system, satellite dish or other central television reception system installed by Declarant or the Association and designated for shared use by the Unit Owners. Any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof that serves two or more Units or the Common Area shall be deemed Common Area, even if such item is located within the airspace or boundaries of a Unit.

(c) Exclusive Use Common Area. Portions of the Common Area shall be referred to as "Exclusive Use Common Area" and are hereby set aside and allocated for the exclusive use of one or more, but fewer than all, Owners, as may be shown and described on the Condominium Plan or described in this Declaration. Reference is made to Section 1.1 of this Declaration for additional detail. Said Exclusive Use Common Area may also consist of an assignment or easement for exclusive use of balcony areas (308-B, 408-B, 705-B, etc.), terrace areas (209-T, 312-T, 406-T, etc.), parking areas (P-1, P-2, P-3, etc.) and accesible (handicap) parking areas (ACC-1 and ACC-2) as may be specifically designated on the Condominium Plan, the deed conveying the Condominium, this Declaration, or a grant or assignment by Declarant or the Association as an appurtenance to any particular Unit.

Such Exclusive Use Common Areas shall be appurtenant to applicable Unit(s) as set forth above. Except as provided in Sections 5.1 and 5.2 of this Declaration, the repair and maintenance of the Exclusive Use Common Areas shall be the responsibility of the Owner of the Unit to which such Exclusive Use Common Area(s) are appurtenant. Use of the accessible parking areas shall be subject Section 7.4(e).

The assignment, transfer or exchange of the right to the exclusive use of an Exclusive Use Common Area designated as accessible parking space between or among Owners, is authorized, provided that the Exclusive Use Common Area is not physically appurtenant to the Unit, the approval of the Board is first obtained, such assignment, transfer or exchange is insurable by a title company, and the assignment, transfer or exchange is memorialized by a recorded document.

(d) Parking Lifts ("Car Stackers'); Parking Easements. The majority of parking spaces in the Development are located on parking lifts or "car stackers" that use machinery to park vehicles in vertical and/or rotating stacks. The parking spaces on the parking lifts are designated on the Condominium Plan as P-1, P-2, P-3, etc. Each parking lift provides parking for two or more permitted vehicles. The parking lift machines are part of the Common Area. Certain Owners shall be granted an easement providing for the exclusive right to park a permitted vehicle in a designated space on one of the

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parking lifts. An Owner that has been granted an easement to park on a parking lift will share that parking lift with the other Owner(s) that have been granted an easement for the right to park on that parking lift. The parking lift areas and related equipment shall be used in accordance with manufacturer guidelines, and as provided in Section 7.4 of this Declaration, and in accordance with any applicable Association Rules that may be promulgated by the Board. Reference is made to Section 7.4 of this Declaration for further information concerning the parking lifts and their use.

The assignment, transfer or exchange of an easement providing for the exclusive right to park a permitted vehicle in a designated space on a parking lift between or among Owners of Units in the Development is authorized, provided that the approval of the Board is first obtained, such assignment, transfer or exchange is insurable by a title company, and the assignment, transfer or exchange is memorialized by a recorded document.

(e) **Owners' Interest and Rights in Common Area**. Each Owner shall have, as appurtenant to that Owner's Unit, a membership in the Association and an undivided interest in the Common Area equivalent to that shown in the Condominium Plan. The ownership of each Condominium shall include both a Unit and an undivided interest in the Common Area as described in this Declaration. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected and of all of the Mortgagees of First Mortgages covering the Condominiums affected as expressed in an amended Declaration. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use all Common Area (other than Exclusive Use Common Area which use is governed by Section 2.2(c)) in accordance with the purposes for which such Common Area is intended and in accordance with all Association Rules, so long as such use does not hinder the exercise of or encroach upon the rights of any other Owners, including another Owner's rights to Exclusive Use Common Area as hereinafter described

(f) **No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed. Each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Condominium or to the fee title to the Unit.

Section 2.3 Rights of Entry and Use. The Units and the Common Area (including the Exclusive Use Common Area) shall be subject to the following rights of entry and use:

(a) The nonexclusive rights of each Owner for ingress, egress and support in, to and throughout the Common Area, subject to the rights of other Owners in the Common Area and Exclusive Use Common Areas, and subject to the terms of this Declaration and the Association Rules.

(b) The right of the Association's agents or employees to enter any Unit to cure any violation or breach of the Governing Documents, provided that the Association has complied with the notice and hearing requirements of the Governing Documents (except in the case of an emergency), and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

(c) The access rights of the Association to enter into or upon any Unit or the Common Area to maintain, repair or replace improvements or property located in the Common Area after forty-eight (48) hours notice to the affected Owner(s) (except in the event of an emergency, in which event no prior notice shall be required).

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(d) The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities, telecommunication, internet service and related facilities as described in Article 6 of this Declaration.

(e) The encroachment rights described in Section 6.5 of this Declaration.

(f) The rights of the Declarant during the construction, sales and marketing period described below, and as described in Section 11.4 of this Declaration. Such rights of Declarant shall include, without limitation, the right of Declarant or Declarant Parties and Declarant's Invitees, agents guests, potential buyers and lessees to enter on any portion of the Development to construct and sell or lease the improvements that Declarant intends to construct on any portion of the Development, to make repairs, and to correct any construction problems thereon; provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld or delayed.

(g) The rights of Owners to make improvements or alterations authorized by Civil Code Section 4760, subject to Sections 7.10, 7.15 and 7.27 of this Declaration and other applicable provisions of this Declaration and the Bylaws.

(h) Subject to Sections 3.8, 3.9, 4.18, and subject to other rights reserved to Declarant in this Declaration, the right of each Owner to ingress and egress through, and use of, the Common Area.

Section 2.4 **Partition Prohibited.** The Common Area shall remain undivided as set forth above. Except as otherwise provided in Civil Code Section 4610, no Owner shall bring any action for partition of a Unit or of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Development and each Owner, by acceptance of a deed to his Unit, shall be deemed to have waived and abandoned, for himself, his successors and assigns (whether by deed, gift, devise, foreclosure or operation of law), the right to bring or maintain any such action for partition. Judicial partition by sale of a single Unit owned by two or more Persons and division of the sale proceeds is not prohibited hereby but partition of title to a single Unit is prohibited.

Section 2.5 **Subdivision Prohibited.** Neither the Association nor any Owner shall subdivide or apply to any appropriate jurisdiction to subdivide the Common Area without the express written consent of all of the Owners and of all the Mortgagees of First Mortgages encumbering any Unit Condominium within the Development and no Owner shall cause or permit the further subdivision of the airspace within such Owner's Unit. This Section 2.5 shall not apply to any subdivision or related activities of Declarant in connection with the completion or build-out of any portion of the Development, including, without limitation, the Commercial Units and related Common Area.

Section 2.6 **Delegation of Use**. Any Owner may delegate, subject to and in accordance with the Governing Documents, such Owner's right of enjoyment to the Common Area and facilities to the members of such Owner's family, such Owner's tenants, or contract purchasers who reside in such Owner's Unit; provided that no such delegation shall relieve such Owner of its duties and obligations under the Governing Documents.

Section 2.7 **Reservation of Access and Construction Easements.** Declarant hereby reserves to itself, its successors and assigns, nonexclusive easements for ingress and egress and construction activities over the Common Area. The rights retained by Declarant and Declarant Parties over the Common Area shall continue to apply and be effective until such time as Declarant has

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completed all construction and related activities and sales, leasing and marketing activities, and conveyed or leased all of its interest in the Development, provided that Declarant's rights shall pass to its successors and assigns as provided in this Declaration. The rights retained by Declarant and Declarant Parties include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences, walls or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as staging or storage areas for materials and equipment to be used in connection with the construction of improvements within the Development and to restrict access thereto by means of a fence, wall or otherwise. The rights reserved herein by Declarant connected with construction activities, including marketing, leasing and sales, shall be deemed to include the right to generate the customary noise, vibration, odors, fumes, exhaust, dirt, dust, and light associated with such activities. The rights reserved herein this paragraph by Declarant connected with construction and development activities, marketing, leasing and sales, shall automatically terminate on the date that is three (3) years after the close of escrow for the sale of the final Unit in the Development by Declarant or its successor.

Section 2.8 **Construction Activities; Sales and Marketing Activities.** Each Owner acknowledges that: (i) the construction of the Development will occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Unit may be disturbed as a result of the noise, odors, dust, fumes, exhaust, dirt, lights, vibrations, and other effects of construction activities; (iii) construction activities may occur during normal business hours, early in the morning, in the evening and on weekends and holidays; and (iv) the disturbances will continue until the completion of the construction on the Property and all improvements thereon. Each Owner and/or occupant in the Development is hereby put on notice that until all improvements in the Development are constructed, marketed, sold or leased, there will be ongoing construction activities in and around the Property, and in the vicinity of the Property and adjacent streets and sidewalks. Such activities may cause noise, vibration, odors, dust, dirt, exhaust, fumes, lights, and access to and use of the Common Area and surrounding areas for construction equipment, machinery, materials, vehicles, personnel, staging, and the storage and transportation for construction workers and supplies.

Section 2.9 **Noise Transmissions; Vibrations**. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was permitted. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise and experience vibration from other Units and Common Areas in the Development, noise and vibration from the Commercial Units, and noises and vibrations from outside the Condominium Building and adjacent and nearby properties, including, but not limited to noise and vibration from music, televisions, stereo and other audio equipment, foot traffic from other Units and the Common Area, voices, noise generated by neighbors, visitors or employees, customers, guests and clients of the Commercial Units, noises generated by use of the Common Area, including, without limitation, the garage, garage doors, parking areas, parking lift machines, lobbies, elevators, stairwells, kitchen equipment, HVAC systems, plumbing fixture operations, fans, garage doors, equipment located on the roof, in the garage, and above ceilings in the Condominium Building, doors, trash and recycling disposal, trash chutes, car, truck and bus traffic, delivery trucks, sirens, trains, public transportation, aircraft noise and other street noises, including noise generated from Pine Street, Polk Street, Austin Alley and Van Ness Avenue. The Development is a mixed-use project containing commercial use(s) along with the residential condominiums, and the residential unit owners and occupants in the Development will hear noise and experience vibration from the sources described herein this Section as well as other noises from other sources.

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Section 2.10 Mixed-Use Project; High-Density Urban Environment.

(a) The Residential Units are part of a mixed-use Development which may also include commercial, retail, office, restaurant, and café uses. Such commercial uses will attract customers, clients, guests, vendors, employees, delivery services, garbage, recycling and compost services, and other services to the overall Development, including areas adjacent to the residential units and common areas, the garage and parking areas, the street and sidewalk in front of the Condominium Building and lobby areas, and at the exterior of the Condominium Building. Such commercial uses may also produce noise, vibrations, and odors which may be experienced from the Residential Units and/or other portions of the Development. Such commercial uses may have outdoor seating areas. Such commercial uses may generate lines of people and become crowded. As the Residential Units are part of a mixed-use project containing commercial uses, the Residential Unit Owners shall be subject to such issues and others inherent in such mixed-use projects.

(b) The Development is located in a high density urban environment with a great range of uses of the surrounding properties, including commercial, retail, restaurant, entertainment and live music venues, hotel, office, transportation systems, cable cars and hospitals. The Development is subject to urban environmental and traffic noise and vibration from Van Ness Avenue (US Highway 101), Muni, buses, cable cars and trucks. The Development is subject to a range of persons who will walk and loiter on the streets and sidewalks surrounding the Property. In particular, Austin Alley at the rear of the Development is a smaller street which may attract a variety of persons, homeless person and vagrants who may loiter, congregate sleep at or near the Property.

Section 2.11 Bicycle Parking Area. Use of any bicycle parking area and any bike repair station and related improvements (if any) in the Development shall be subject to the Rules of the Association, as may be amended from time to time. Users of the bicycle parking spaces shall have access to and use of portions of the Common Areas of the Development, including, without limitation, garage areas, stairways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with use of such bicycle parking space.

Section 2.12 Commercial Parking in Garage. A limited number of parking spaces in the garage of the Development may be designated by Declarant for use by the Owners, tenants, or lessees of the Commercial Units, as well as the employees, customers, clients, patrons or guests of the Commercial Units. Such users of the designated commercial parking spaces may have access to and use of portions of the Common Areas of the Development, including, without limitation, garage areas, stairways, hallways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with access to and use of such commercial parking spaces. The Association shall not unreasonably restrict the use of the commercial parking spaces. As of the date of this Declaration, Declarant intends to designate two (2) such parking spaces (total) for the aggregate use of commercial tenants as described in this Section 2.12.

Section 2.13 Car Share Parking in Garage. A limited number of parking spaces in the garage of the Development may be designated for use by a car share company or companies. Owners and occupants of the Development, as well as other third parties and members of the general public may use the car share parking spaces. Such users of the car share parking spaces shall have access to and use of portions of the Development, including, without limitation, garage areas, hallways, stairways, entry doors, elevators and lobby areas, as may be necessary or convenient in connection with use of such car share parking spaces. Car share parking spaces may be located in the Common Area garage, and use of the car share parking spaces shall be determined by Declarant so long as Declarant owns any Unit in the Development, and thereafter by the Board; provided that Declarant may assign the right to determine the use of the car share spaces to the Association at an earlier date.

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Section 2.14 **Limited Parking in Development.** There are fewer parking spaces in the Development than there are Units. Parking is not automatically included with each Unit in the Development. Parking may not be available to all Owners and Occupants of Units who desire to park in the Development, or their family members, guests or Invitees.

Section 2.15 **View Impairment**. By accepting a deed to a Unit, each Owner acknowledges that: (a) there are no protected views, and no Owner is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit, (b) any view from the Unit is not intended as part of the value of the Unit and is not guaranteed, and (c) any future development, construction or other installation of improvements on the Property or any adjacent or other property may impair the view from any Unit.

Section 2.16 **Affordable Housing Program.** Certain Condominium Units in the Development participate in the City and County of San Francisco Inclusionary Housing Program, and are designated as affordable units subject to certain resale and rental restrictions. As of the date of this Declaration, the Development contains twelve designated affordable units. Owners may contact the Mayor's Office of Housing for further information concerning any affordable units and applicable restrictions.

Section 2.17 **Notices of Special Restrictions**. The Development is subject to the applicable terms and conditions of that certain Notice of Special Restrictions Under the Planning Code recorded on December 1, 2014, as Document No. 2014-J981705, and that certain Notice of Special Restrictions Under the Planning Code recorded on December 14, 2014, as Document No. 2014-J995310, both in the Official Records of the City and County of San Francisco, State of California. Said Notices of Special Restrictions impose certain restrictions and requirements on the Development. Reference is made to said Notices of Special Restrictions for further detail concerning the terms and conditions.

Section 2.18 **Property Line Openings.** Pursuant to terms and conditions of that certain Declaration of Use Limitation recorded on June 17, 2015, as Document No. 2015-K077087 in the Official Records of the City and County of San Francisco, State of California, in the event the adjacent property located at 1525 Pine Street (APN: Block 667, Lot 20) is improved in such a manner that the openings in The Austin Condominium Building no longer comply with the San Francisco Building Code, then said openings shall be closed off or protected as required by the Director of the Department of Building Inspection. Should the property line openings be required to be closed or otherwise protected pursuant to said Declaration of Use Limitation, the expense thereof shall be borne by, and the work performed under the direction of, the Association. Reference is made to said Declaration of Use Limitation for further detail concerning its terms and conditions.

ARTICLE 3

THE ASSOCIATION

Section 3.1 **Incorporation.** The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the deed for the first sale of a Unit, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

Section 3.2 **Action Through Designated Officers.** Except as to matters requiring the approval of Owners as set forth in the Governing Documents, the affairs of the Association, including the

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exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint or such Persons with delegated authority as set forth in the Governing Documents.

Section 3.3 **Association to Manage the Common Area.** The management of the Common Area shall be vested in the Association in accordance with the Governing Documents. The Owners of all of the Units by accepting title to a Unit hereby covenant and agree that the administration of the Development shall be in accordance with the provisions of the Governing Documents.

Section 3.4 **Membership.** The Owner of a Unit shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as that Owner's ownership ceases for reasons set forth herein, at which time that Owner's membership in the Association shall automatically terminate. Each Owner shall have the rights, duties and obligations of membership as set forth in the Governing Documents. Any party that holds an interest in a Condominium merely as security for performance of an obligation shall not be a Member of the Association.

Section 3.5 **Transferred Membership.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale, conveyance, judicial sale or other voluntary or involuntary transfer of the Condominium to which it is appurtenant and then only to the purchaser in the case of a sale or to the transferee in the case of a transfer. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in its name to the purchaser of its Condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

Section 3.6 **Membership Classes and Voting Rights.** The Association shall initially have two classes of voting Members as follows:

(a) **Class A:** Class A voting Members shall consist of all Owners with the exception of the Declarant and shall be entitled to one vote or right of consent for each Condominium owned. When more than one Person holds an interest in any Condominium, all such Persons shall be Members; provided, however, the vote or right of consent for any such Condominium shall be exercised in accordance with the Bylaws and as such multiple Owners may among themselves determine, but in no event shall more than one vote be cast or right of consent be exercised with respect to any Condominium. No fractional votes shall be permitted with respect to any Condominium. When more than one Owner owns a Condominium, there shall be a Voting Member for such Condominium, as provided in the Bylaws.

(b) **Class B:** The Class B voting Member shall consist of the Declarant who shall be entitled to three (3) votes or rights of consent for each Condominium owned. Declarant may designate one or more persons to exercise Declarant's rights as a member of the Association. The Class B voting membership shall cease and be converted to Class A voting membership on the happening of whichever of the following events first occurs:

(i) When seventy-five percent (75%) of the Condominiums proposed for the Development have been conveyed to Class A Members; or

(ii) The second (2nd) anniversary of the first conveyance of a Residential Condominium to a Class A Member in the Development under the authority of a Final Public Report issued by the BRE.

The use of Class B voting shall be entirely at the discretion of Declarant. If neither of the

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foregoing events has yet occurred, by written notice to the Board, Declarant may elect to cease the Class B membership and convert the Class B membership to Class A membership.

(c) The provisions of Section 3.6(b) can be amended only with the consent of Declarant during such time as the Class B membership is in existence.

(d) **Declarant's Right to Select Director**. In any election of Directors for the Board of Directors after Class B memberships have been terminated, so long as Declarant owns any portion of the Property, the Association shall adopt special procedures to ensure that at least one (1) Director is selected by Declarant. A representative to the Board selected by Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant. This right of Declarant to select at least one Director to the Board may be exercised by Declarant in Declarant's sole discretion. The provisions of Section this 3.6(d) can be amended only with the consent of Declarant during such time as Declarant owns any portion of the Property.

(e) Voting rights of a Class A Member shall vest at the time Assessments are levied against such Owner's Unit, or as provided in a subsidization plan which may be approved by the BRE, whichever occurs first. Subject to the foregoing in this Section 3.6, matters requiring the approval of the Members may be approved (i) by the requisite votes cast in person or by proxy at a duly-held regular or special meeting of the Members at which a quorum was present, (ii) by written ballots cast in compliance with the requirements of California Corporations Code Section 7513 or any successor statute thereto, or (iii) by unanimous written consent of all the Members. Reference is made to the Bylaws for further detail.

(f) Other than the provisions contained in Section 11.6, no provision of the Condominium Documents which requires the approval of a prescribed majority of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which it owns. Notwithstanding anything to the contrary herein, any action for which the Condominium Documents require the approval of a majority of Members of the Association other than Declarant shall require the vote or written assent of a majority of the Class B voting power as well as the vote or written assent of a majority of the Class A voting power, or, upon the conversion of Class B to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

(g) **Vote of Commercial Unit Owners**. Notwithstanding anything to the contrary set forth in this Declaration, any action of the Board which disproportionately impacts the Commercial Units or Commercial Unit Owners in a materially adverse manner shall require the approval of the Commercial Unit Owners.

(h) **Personal Liability**. No volunteer officer or volunteer director of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent, director, member, partner or employee or consultant of Declarant (each a "Management Party"), shall be personally liable to any Owner, or to any other Person, including the Association, for any error or omission of any Management Party if such Person has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct.

(i) Notwithstanding the foregoing provision of this Section 3.6, Declarant shall have no control over the Association's ability to decide whether or not to initiate a construction defect claim under Title 7 (Part 2, Division 2) of the California Civil Code. During the period from the incorporation of the Association and the first election of the Board of Directors, any decision whether or not to initiate a

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construction defect claim under Title 7 shall be made by vote of a majority of the Members, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members, or may be by written ballot. During the period between the first closing of an escrow for a Unit within the Development and the election of a Board at least two members of which were elected solely by votes of Members other than Declarant, the Board shall take any action concerning construction defect claims under Title 7 (including, if necessary, the allocation of Association funds) as requested by a majority of the Members other than Declarant pursuant to a vote of the Members, excluding the vote of Declarant, which vote may be either at a duly held meeting of the Members, or may be by written ballot. Upon the election of a Board of Directors, which results in there being at least two (2) Directors elected solely by votes of Members other than Declarant ("Non-Declarant Directors"), any decisions made thereafter by the Association about whether or not to initiate a construction defect claim under Title 7 shall be made by the two (2) Non-Declarant Directors, or in the event that there are three (3) or more Non-Declarant Directors serving on the Board, by a majority of the Non-Declarant Directors; provided, that any determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 must be ratified by at least seventy-five percent (75%) of the Members, excluding the vote of Declarant; provided, further, that any such determination by such Non-Declarant Directors to initiate a construction defect claim under Title 7 shall be subject to the terms and conditions of Sections 10.3 and 10.4 of this Declaration. The provisions of this section may be amended only with the vote or written consent of at least seventy-five percent (75%) of the Members, excluding the vote of Declarant.

Section 3.7 General Duties and Powers. In addition to the duties, powers and limitations enumerated in the Articles and Bylaws of the Association or elsewhere provided for at law or herein, and those enumerated in Section 7140 of the Corporations Code, and without limiting the generality thereof, the Association, through its Board of Directors, shall have the general powers and duties described in this Section 3.7:

(a) Subject to the provisions of Section 5.1 of this Declaration, manage, control, operate, repair, replace, restore, and maintain in good condition and appearance, all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than that placed by a Unit Owner or tenant upon any Exclusive Use Common Area). The Association shall maintain and repair any portions of the Common Area damaged by the presence of wood destroying pests or organisms, and all property that may be acquired by the Association. In furtherance of its responsibilities under this Section 3.7, and as further described in Sections 5.1 and 5.2 below, the Association may cause any maintenance, repair or replacement of any portion of the Common Area. Relocation of Unit Owners or tenants required in order to repair any areas within the responsibility of the Association shall be subject to the provisions of Civil Code Section 4785 et seq.

(b) Acquire, provide and pay for water, sewer, garbage disposal, electrical, gas and other necessary utility services for the Common Area, and for those Units to which said utilities and services are not separately provided; provided, however, the Association shall have no liability to any Unit Owner arising out of the temporary or permanent failure of any utility, governmental entity or quasi-utility to deliver such services after the Association has contracted for such services.

(c) Grant easements over, under and through the Common Area and/or any of the Units that are reasonably necessary for the efficient operation of the Development.

(d) Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in protecting the interests of the Association and its Members, as further provided in Article 9 of this Declaration.

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(e) Have the authority to employ a manager or other Person(s) and to contract with independent contractors or managing agents to perform all or any part of the duties or responsibilities of the Association except the initiation and execution of disciplinary proceedings against Members in accordance with the procedure set forth in the Bylaws; provided, however, that any contract with a firm or Person appointed as a manager or managing agent shall not exceed a one (1) year term and shall provide for the right of the Association to terminate the same upon thirty (30) days written notice with cause and upon sixty (60) days written notice without cause, in either case without payment of a termination fee or other penalty. The Association shall employ professional manager(s) or managing agent(s) consistent with industry best practices, and as is appropriate to maintain the Development in a first-class condition and repair, although the contract with any such manager or managing agent shall be of limited duration and contain the termination provisions as set forth above.

(f) Discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and assess the costs thereof as a monetary penalty against any Unit Owner responsible for the existence of said lien as determined by the Board after notice and a hearing in accordance with the Bylaws.

(g) Enforce this Declaration and adopt reasonable Association Rules not inconsistent with this Declaration for the use of the Common Area and all improvements and facilities now or hereafter located thereon and the conduct of Unit Owners and their tenants, guests and Invitees with respect to the Development and other Unit Owners and Occupants.

(h) Defend, prosecute and settle, as deemed necessary, all lawsuits, arbitrations, mediations and administrative proceedings involving the Association in the Association's own name as the real party in interest and without joining with it the individual Owners in the manner described in Civil Code Section 5980.

(i) Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow, lend money or otherwise use its credit and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property or income, and including contracts, leases and purchase and sale agreements for services, equipment, machinery and other improvements serving the Development or portion thereof.

(j) Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

(k) Fill a vacancy on the Board except for (1) a vacancy created by the removal of a Board member, which shall be filled as provided in the Bylaws and (2) a vacancy with respect to any Board member appointed by Declarant. Any election of a Board member shall comply with applicable procedures provided in Civil Code Sections 5100-5130.

(l) Establish and maintain separate, restrictive account(s) into which only Annual Assessments and Special Assessments for reserves shall be deposited. Approval of the Board shall be obtained prior to the expenditure of such reserves.

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(m) Subject to the provisions of Article 10 of this Declaration, and subject to the provisions of the Limited Warranty, institute, defend, settle, or intervene on behalf of the Association, subject to compliance with Civil Code Sections 5900-5920 and 5925-5965 and the provisions of this Declaration, in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

(1) enforcement of this Declaration, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law;

(2) damage to the Common Area;

(3) damage to Unit(s) which the Association is obligated to maintain or repair; or

(4) damage to Unit(s) which arises out of, or is integrally related to, damage to the Common Area or Units which the Association is obligated to maintain or repair.

(n) In the event that a public nuisance exists or is conducted on any portion of the Common Area, the Association shall have the right to take reasonable measures to abate such nuisance, subject to the reasonable discretion of the Board.

(o) As further described in the Bylaws, the Association shall adopt rules as required by Civil Code Sections 5100-5130 pertaining to elections, campaigns, voting, proxies and other matters contained in Civil Code Sections 5100-5130.

(p) Provide the Unit Owners with all notices, disclosures, reports and statements required by this Declaration and as required by the Davis-Stirling Act, including, without limitation, the following notices:

(1) Annual notices of the Association's operating budget (including a reconciliation of actual expenses incurred for the previous year), Assessment and Reserve Funding Disclosure Form, and the Association's foreclosure rights (See Section 4.11);

(2) Annual notices concerning insurance policies maintained by the Association (See Section 9.9(c));

(3) Notices concerning alternative dispute resolution (See Sections 10.1 and 10.2);

(4) Schedule of fines adopted by the Association (Civil Code Section 5850);

(5) Balance sheet and related information as set forth in Section 9.08(d)(2) of the Bylaws;

(6) Statement of any transaction or indemnification described in California Corporations Code Section 8322(d) and (e), and a statement notifying members of their right to have copies of minutes of meetings of the governing body, as set forth in Section 9.08(d)(4) of the Bylaws;

(7) Notice of Architectural Guidelines and Procedures required by Civil Code Section 4765; and

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(8) Other notices and disclosures required by Civil Code Sections 5300-5320, 5500-5560, 5565, 5570, 5580, 5730, 5810, 4040(b).

(q) Enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of exclusive or nonexclusive telecommunications, cable or satellite television and/or internet services contract(s) with provider(s) of such services pursuant to which such service provider(s) will serve as the exclusive provider(s) of such services to each Unit in the Development.

(r) Provide to Declarant all notices described in Section 3.7(p) above. In addition to the notices described in Section 3.7(p) above, the Board shall provide Declarant with all other Association notices, reports, summaries, budget pro-formas and statements, assessment notices under Section 4.6, 4.11, expenditure of Reserves notices under Section 4.21, and copies of all other notices required to be given to the Unit Owners by other provisions in this Declaration and in the Bylaws, including, without limitation, notices, agendas, and minutes of all Board and Association Member meetings.

(s) Subject to the rights of Declarant, the Association shall have the right to enter into agreements with the Declarant and/or adjacent property owner(s) concerning reciprocal access easements, shared use and maintenance of easement areas in the Development, and shared use and maintenance of the Common Area, parking and/or other portions of the Development.

(t) The Association shall have the right and authority to enter into maintenance or subsidy agreements with Declarant.

(u) The Association shall have the power to limit the number of an Owner's Invitees who may use the Common Area facilities and improvements, which right shall include, without limitation, the right to impose disciplinary measures taken after notice and hearing, as provided in this Declaration or the Bylaws.

(v) The Association may charge a reasonable fee to all Unit Owners to cover all of the costs of administering a Unit Owner, or the tenants of a Unit, moving in or out of a Unit, or moving furniture or equipment or other objects into or out of a Unit that requires the use of the elevators in the Development, or parking of any moving truck or vehicle in connection such move, or use of any loading dock areas.

(w) The Association shall have the authority to approve installation of electric vehicle charging stations and meters, and to establish rules and fees for the use thereof.

(x) Notwithstanding anything to the contrary in this Declaration or the Bylaws, Declarant shall have the right to serve on the Board in an advisory capacity if desired by Declarant, as further described in Section 5.05 of the Bylaws.

Section 3.8 **Association Rules.** As further described in Section 3.7(g) above, the Association shall have the power to adopt, amend, and repeal the Association Rules as it considers reasonable and appropriate for the Development, subject to the Unit Owners' right to receive prior notice of, and to challenge, the adoption, amendment, or repeal of certain categories of Association Rules as provided in California Civil Code Sections 4340-4370. The Association Rules shall govern, without limitation, parking restrictions, bicycle parking, motorcycle parking, moving procedures, noise, garbage, building access, storage areas, signs, pets, long and short term leasing of the Units, minimum standards of property maintenance, and the use and enjoyment of the Common Area and all facilities, amenities and improvements located thereon or related thereto, including, without limitation, any common courtyard,

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walkways, corridors, common area roof terraces and related facilities, and private exclusive use terraces and balconies appurtenant to Unit Owners' Units, by all Unit Owners and Occupants, and their respective family members, guests and Invitees. The Association Rules shall not be inconsistent with nor materially alter any provisions of this Declaration, the Articles, or the Bylaws. In a conflict between a provision of the Association Rules and the provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of such inconsistency. A copy of the Association Rules as adopted, amended, or repealed shall be mailed or otherwise delivered to each Unit Owner and a copy shall be posted in a conspicuous place within the Development as and if required by the Davis-Stirling Act.

Notwithstanding anything to the contrary in this Section 3.8 or in any other provision of this Declaration, any Association Rule that materially and adversely affects the permitted use of a Commercial Units shall not be effective without the prior written consent of the Owner of the affected Commercial Unit. Such Commercial Unit Owner shall negotiate in good faith with the Association concerning any proposed Association Rule that could materially and adversely affect the permitted use of that Owner's Commercial Unit and shall not unreasonably withhold or delay its review and consent. The provisions of this Section 3.8 pertaining to Commercial Units shall not be amended without the prior written consent of the Owner of the affected Commercial Unit.

Notwithstanding anything to the contrary in this Section 3.8 or in any other provision of this Declaration, any Association Rule that requires Declarant or its successor to obtain any approval or consent from the Association or the Board or Architectural Control Committee for any construction, installations, completion or renovation of the Development or any improvements thereon, or any sale or leasing of any Unit in the Development, shall not be effective without the prior written consent of Declarant or its successor. This paragraph may not be amended without the prior written consent of Declarant or its successor.

Section 3.9 **Penalties; Fines; Disciplinary Action.** The Board shall have the power to impose fines, penalties or take disciplinary action against any Owner for failure to pay Assessments (as further described in Article 4 below) or for violation of any provision of the Governing Documents or the Association Rules. Penalties may include but are not limited to fines, suspension of all voting rights and other privileges of Association membership, suspension of right to park in the Development, suspension of right to use storage area or bicycle parking in the Development or right to use Common Area amenities, or other appropriate discipline, as determined by the Board, provided that the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine, penalty or disciplinary action. The Association shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration and the Association Rules as further described in the Bylaws. All fines, penalties, or disciplinary actions against Owners shall comply with the notice and procedural requirements of this Declaration and Sections 5850-5855 of the California Civil Code.

Section 3.10 **Authority Over Common Area**. The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more Condominiums in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey, or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive or nonexclusive use easements or rights, licenses, lot-line adjustments, rights-of-way, or dedications in, on, over, or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain, or replace lines, cables, wires, conduits, or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; (ii) accommodate any encroachment

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that in the sole discretion of the Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more Condominiums in the Development) does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more Condominiums in the Development) is in the interest of the Association and its Members and does not unreasonably interfere with access to and use of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such actions and authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish such actions, including, but not limited to, grant deeds, easements, licenses, condominium plans, subdivision maps, and lot-line adjustments. Declarant's rights described in this Section 3.10 shall terminate on the first to occur of the following: (1) the conveyance by Declarant of the last Unit in the Property owned by Declarant, or (2) the date that is two years from the first conveyance of a Unit in the Property by Declarant pursuant to a Public Report issued by the BRE.

Section 3.11 Acceptance of Common Area and Improvements. The nature, design, quality and quantity of all Common Area and all improvements thereon shall be determined by Declarant in its sole discretion. The Association shall accept any Common Area and all improvements thereon and any easements over the Common Area conveyed by Declarant and/or created under this Declaration. The Association shall comply with the requirements of any agreements entered into between Declarant and any governmental agency pertaining to the Common Area and improvements thereon. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Common Area and improvements thereon, or the acceptance of inspection, maintenance and repair obligations related thereto, the Association shall be obligated to accept title to the Common Area and improvements thereon and undertake inspection, maintenance and repair obligations therefor, pending resolution of the dispute, in accordance with the provision for enforcement set forth in Article 10 of this Declaration.

ARTICLE 4

ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Condominium owned within the Development hereby covenants, and each Unit Owner by acceptance of a deed for each Condominium, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: Annual Assessments, Special Assessments, and all other Assessment to be established and collected as hereinafter provided. The Assessments, together with interest, costs and reasonable attorney's fees, shall be charged to a Unit and shall be a continuing lien upon such Unit, the lien to become effective upon the recordation of a Notice of Delinquent Assessment. Each such Assessment, together with interest, costs and a reasonable attorney's fee, shall also be the personal obligation of the Unit Owner of such Unit at the time such Assessment becomes due. As required by the California Civil Code, before the Association may place a lien upon a Unit pursuant to this section, to collect an obligation which is past due, the Association shall notify the Unit Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Unit Owner, including items on the statement which indicate the Assessments owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments owed toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection payments. The personal obligation for delinquent Assessments shall not pass to the Unit Owner's successors in title unless expressly assumed in writing by them. The interest of any Owner in the amounts paid pursuant to

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any Assessment upon the transfer of Ownership shall pass to the new Owner. No Unit Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use of enjoyment of the Common Area or by the abandonment of his Unit.

Section 4.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all of the residents in the entire Development, for the improvement and maintenance of the Common Area and for the common good of the Development. Use of Association funds for election or campaign purposes shall be limited as provided in Civil Code Section 5135. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon the sale or transfer of any Unit, the Owner's interest in the funds shall be deemed automatically transferred to the successor of such Owner.

Section 4.3 **Annual Assessments.** Each Unit Owner shall pay Assessments based upon the initial Association operating budget submitted by Declarant and accepted by the BRE as a part of Declarant's application for a Public Report. Said budget shall be based on the estimated operating expenses to be paid during the initial year by the Association in the performance of its duties (plus a reasonable provision for reserves for maintenance, repair and replacement) and shall be assessed against each Unit in the Development as provided in Section 4.8 of this Declaration. The operating expense budget for the Association, including reserves, shall be reviewed and analyzed annually by the Board and revised periodically at the discretion of the Board in order to reflect the actual operating expenses and required reserves of the Development.

During each succeeding fiscal year of the Association, the Board may not impose an Annual Assessment that is more than twenty percent (20%) (or any other maximum percentage permitted by law) greater than the Annual Assessment for the Association's preceding fiscal year without the approval of Unit Owners casting a majority of votes at a meeting or election of the Association at which a quorum was present in accordance with Section 4.6 and conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Unit Owners regarding assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to why the expense was not or could not have been reasonably foreseen in the budgeting process and such resolution shall be distributed to the Members with the notice of Assessment). The Board must comply with the provisions of Civil Code Sections 5600-5615 prior to any increase in Annual Assessments.

Unless the Association is exempt from Federal and State of California income taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in such other manner authorized by law or regulation of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income to the Association.

Section 4.4 **Exemption from Assessments for Uncompleted Facilities and Budget Items Related to Occupancy.** Notwithstanding the provisions of Sections 4.3 and 4.8, the Board may exempt all Owners if Section 4.4(a) is satisfied, and may exempt each Owner of a Unit which satisfies Section

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4.4(b), from the payment of a portion of the Annual Assessment levied against that Unit as described in those paragraphs.

(a) Common Area; Uncompleted Facilities. The Association may exempt from Assessments those portions which are for the purpose of defraying Common Expenses and reserves directly attributable to the existence of Common Area facilities and improvements that are not complete at the time such Assessments commence. Any such exemption shall be in effect only until the first to occur of the following events: (i) a notice of completion of such Common Area facility or improvement is recorded; (ii) the Common Area facility or improvement has been placed into use; or (iii) the Common Area facility or improvement is installed and no one other than the Association has been obligated to maintain the Common Area facility or improvement.

(b) Budget Items Related to Occupancy. The Association may exempt from Assessments payable by Declarant for any Units owned by Declarant or its successor portions of those budgeted line items for Common Expenses that are attributable to use and occupancy of Units. Any such exemption shall be in effect with respect to a Residential Unit only until (a) close of escrow for the applicable Residential Unit, or (b) occupancy of the applicable Residential Unit, whichever first occurs. Any such exemption shall be in effect with respect to a Commercial Unit only until the operation of businesses in the applicable Commercial Unit. For illustration purposes and not limitation, examples of items that may be subject to this exemption are expenses for water, sewer, gas, utilities related to elevator operation, heating ventilation and air conditioning, trash facilities and removal, telecommunication, internet, cable or satellite television, fees not incurred by the Association for custodial or maintenance services, property management fees (should the Association be charged based upon occupancy) and inspection costs for any utility facilities solely servicing the unoccupied Residential Units or Commercial Units.

Section 4.5 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the Common Expenses of the Association for such fiscal year (including, but not limited to, unanticipated delinquencies, costs of construction and unexpected repairs, replacement or reconstruction of capital improvements in or on the Common Area including fixtures and personal property related thereto). The aggregate of Special Assessments during any fiscal year shall not exceed five percent (5%) of the budgeted gross expenditures of the Association for that fiscal year without an approval of Unit Owners casting a majority of the votes at a meeting or election of the Association at which a quorum was present and in accordance with Section 4.6 conducted in accordance with Corporations Code Sections 7510 et seq. and 7613. Any such voting of the Unit Owners regarding assessments shall comply with the applicable procedures in Civil Code Sections 5100-5130. This Section shall not limit Assessment increases necessary for the following emergency situations: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered; (3) an extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget (prior to the imposition or collection of an Assessment under this subsection (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and a determination as to why the expense was not or could not have been reasonably foreseen in the budgeting process and such resolution shall be distributed to the Members with the notice of Assessment). The Board may not levy a Special Assessment without complying with the provisions of Section 5600-5615 of the Civil Code.

Unless exempt from Federal and State of California income taxes, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the

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purpose or purposes for which it was levied, or otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, to the extent possible, its taxation as income to the Association.

Section 4.6 **Notice and Quorum for Adoption of Annual or Special Assessment.** Any action authorized to be taken by the Members under Sections 4.3 and 4.5, shall be taken at a meeting called for that purpose, written notice of which shall be mailed by first class mail, postage prepaid to each Member at the address of each Unit owned by such Member within the Development not less than ten (10) days nor more than ninety (90) days prior to the meeting. For purposes of Sections 4.3 and 4.5 only, quorum means more than fifty percent (50%) of the Owners of the Association. The proposed action may also be taken without a meeting pursuant to the provisions of Corporations Code Section 7513. Any voting of the Owners regarding assessments shall be by secret ballot and shall comply with the applicable procedures in Civil Code Sections 5100-5130.

The Association shall provide notice to the Owners of the separate interests of any increase in the Annual Assessment or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. Such notice shall be provided either personally or by first-mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable.

Section 4.7 **Individual Special Assessment.** The Association shall have the authority to levy an Individual Special Assessment, pursuant to the procedures contained in the Governing Documents, against any Condominium or any Owner in order to (i) impose fines, penalties or take disciplinary action against any Owner for violation of any provision of the Governing Documents, (ii) obtain reimbursement of funds expended by the Association, including, without limitation, any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Condominium or their family members, guests, agents, Invitees or pets in violation of the Governing Documents, or (iii) to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit and/or occupant into compliance with the provisions of this Declaration and the Governing Documents. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association; provided that payment of the deductible amount of any such insurance policy shall be the responsibility of the Owner. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association shall promptly refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association shall have the authority to enforce the delinquent assessment as described in Sections 4.15 through 4.18 of this Declaration, subject only to the directly applicable limitations required by Civil Code Section 5725. The Association shall have the authority to adopt a reasonable schedule of Individual Special Assessments for any violation of the Governing Documents. If after notice and hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose such additional assessment each time the violation is repeated and enforce such assessment as provided herein. A hearing committee may be established by the Board to administer the foregoing.

Section 4.8 **Division of Assessments.** All Annual and Special Assessments shall be divided among, allocated and assessed to the Unit Owners as follows:

(a) Annual and Special Assessments for Residential Common Expenses and General Common Expenses, as such terms are defined in this Section 4.8 and itemized in the Operating Budget for The Austin Owners Association (the "Association Budget"), shall be allocated and assessed to each Unit

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Owner as set forth below and as more specifically itemized in the Association Budget. Those Owners that obtain an easement for the exclusive use of a parking space in the garage of the Development shall be required to pay an additional assessment for Parking Garage Expenses, as described in Section 4.8(d) below.

(b) General Common Expenses are those expenses relating to both the Residential Units and Commercial Units and Common Area used by both the Residential Unit Owners and Commercial Unit Owners. General Common Expenses shall be allocated and assessed to each Unit Owner as set forth below and as more specifically itemized in the Association Budget. The General Common Expenses shall be divided and allocated equally among all Unit Owners, except for those General Common Expenses that will be prorated as described below. Those General Common Expenses for items that are reasonably expected to provide certain Unit Owners with benefits at least ten percent (10%) greater than other Unit Owners with different sizes of Units shall be prorated according to the percentage for each Unit set forth in the Association Budget, which percentage is based on the ratio of the square footage of the floor area of each Unit to the total square footage of the floor area of all Units. Such proration percentage for each Unit's share of the General Common Expenses is set forth on Exhibit B to this Declaration. Reference is made to the Association budget for further detail regarding the equal General Common Expenses and prorated General Common Expenses.

(c) Residential Common Expenses are those expenses relating only to the Residential Units and Common Area used by the Residential Unit Owners. Residential Common Expenses shall be allocated and assessed to each Residential Unit Owner as set forth below and as more specifically itemized in the Association Budget. The Residential Common Expenses shall be divided and allocated equally among the Residential Unit Owners, except for those Residential Common Expenses that will be prorated as described below. Those Residential Common Expenses for items that are reasonably expected to provide certain Residential Unit Owners with benefits at least ten percent (10%) greater than other Residential Unit Owners with different sizes of Residential Units shall be prorated according to the percentage for each Residential Unit set forth in the Association Budget, which percentage is based on the ratio of the square footage of the floor area of each Residential Unit to the total square footage of the floor area of all Residential Units. Such proration percentage for each Unit's share of the Residential Common Expenses is set forth on Exhibit B to this Declaration. Reference is made to the Association Budget for further detail regarding the equal Residential Common Expenses and prorated Residential Common Expenses.

(d) "Parking Garage Expenses" are those expenses related to the parking spaces and related areas and improvements of the garage in the Development. Because the garage is considered a Common Area, all Unit Owners shall pay operating costs and reserves for maintenance, repair and replacement of the garage area generally. Certain Unit Owners with an exclusive right to use a parking space in the Development shall be required to pay an additional assessment for Parking Garage Expenses. Parking Garage Expenses include operating costs and reserves related to the parking spaces and related areas and improvements of the garage in the Development. Reference is made to the Association Budget for further detail concerning the Parking Garage Expenses. Each Unit Owner with the exclusive right to use a parking space in the Development , whether such parking space is located on a parking lift or on the surface of the garage floor, shall pay, for each parking space such Unit Owner has the exclusive right to use, the per-space assessment for Parking Garage Expenses described in the Association Budget. Those Unit Owners that do not have the exclusive right to use a parking space shall pay operating costs and reserves for maintenance, repair and replacement of the garage area generally and shall not be required to pay the extra assessment for Parking Garage Expenses.

(i) The Parking Garage Expenses are a "cost center," and the funds collected by the Association for Parking Garage Expenses shall be subject to the following rules and procedures:

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(1) separate accounting of Parking Garage Expenses cost center funds, (2) separate annual review of Parking Garage Expenses cost center funds, (3) separate disclosure to the Owners of Units with the exclusive right to use a parking space in the Development of the reserves for Parking Garage Expenses cost center funds, and (4) separate reserve study for Parking Garage Expenses cost center funds. Costs for separate accounting and related procedures for the Parking Garage Expenses cost center funds described above in this paragraph shall be separated from other accounting costs related to the Association Budget, and shall be paid only by those Owners of Units with the exclusive right to use a parking space in the Development.

(ii) Parking Garage Expenses cost center funds are designated for use for expenses related to the parking areas in the garage of the Development. If the Board determines that Parking Garage Expenses cost center funds may be temporarily used for general purposes related to Common Expenses of the Association, then the following rules shall apply to such uses: (1) there must be reasonably detailed documentation of such uses, (2) there must be disclosure of such uses to the Owners of Units with the exclusive right to use a parking space in the Development, (3) any Parking Garage Expenses cost center funds that are used for general purposes related to Common Expenses of the Association shall be replenished.

(e) The initial Association Budget submitted by Declarant and reviewed by the BRE as described above shall be in effect for one (1) year after the close of escrow for the sale of the first Condominium Unit by Declarant. After the first year, the Association Budget, including reserves, shall be reviewed annually by the Board and revised at the discretion of the Board in order to reflect the actual operating expenses and required reserves of the Development.

(f) Annual Assessments shall be charged to and collected from each Owner on a monthly basis at the rate of one-twelfth (1/12) of the Annual Assessment charged with respect to each Condominium Unit.

(g) Special Assessments, other than an Individual Special Assessments, shall be levied against each of the Owners in the same proportion as Annual Assessments and may be enforced in the same manner as an Annual Assessment. Special Assessments shall be charged to and collected from the Owners in either one (1) single payment, or in monthly payments, as determined by the Board.

Section 4.9 Date of Commencement of Annual Assessment. The Annual Assessment provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium from Declarant to an Owner under authority of a Public Report issued by the BRE. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Annual Assessments may be temporarily reduced or abated pursuant to a subsidy or maintenance agreement entered into between Declarant and Association.

Section 4.10 Failure to Establish Annual Assessment. Subject to the provisions of Section 4.3 hereof, the Board shall determine and fix the amount of the Annual Assessment charged against each Unit at least thirty (30) days in advance of each fiscal year of the Association. In the event that the Board fails or refuses to establish an Annual Assessment as required by this Section, the Annual Assessment for the immediately preceding fiscal year shall be the Annual Assessment for the fiscal year as to which no Annual Assessment has been established unless an increase or decrease therein is approved by a majority of each class of Members or, in the event Class B shares have been converted to Class A shares, the affirmative vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

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Section 4.11 **Annual Notice of Assessments and Foreclosure Rights.** The Association shall distribute a copy of the pro forma operating budget (or a summary, as provided for in Civil Code Section 5320(a)(2)) within thirty (30) days to ninety (90) days before the end of the Association's fiscal year, as required by Civil Code Section 5300, and as further set forth in the Bylaws. The pro forma operating budget (or summary thereof) shall at a minimum include: (i) all of the information and statements required by Civil Code Section 5300(b) (including, without limitation, all of the information concerning the Association's reserves), and (ii) the disclosures required by Civil Code Sections 5570 and 5300(e) (Assessment and Reserve Funding Disclosure Summary Form). In addition, the written notice described in Sections 5730 and 5310(a)(6) of the Civil Code (notice regarding foreclosure rights of the Association) shall be provided to each member of the Association within thirty (30) days to ninety (90) days before the end of the Association's fiscal year. This notice shall be printed in at least 12-point type.

Section 4.12 **Certificate as to Payment.** The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid. Such certificate shall be deemed to be conclusive evidence of the payment of such Assessments to the extent stated therein to have been previously paid.

Section 4.13 **Delinquency of Assessment; Right to Lien.** All Annual and Special Assessments, or monthly installments thereof, levied pursuant to this Declaration are delinquent fifteen (15) days after they become due. For each delinquent Assessment, or monthly installment thereof, the Association may recover: (i) reasonable costs incurred in collecting the delinquent Assessment, or part thereof, including reasonable attorney's fees, (ii) a late charge not to exceed ten percent (10%) of the delinquent Assessment or ten dollars ($10.00), whichever is greater, and (iii) interest on all sums imposed herein, including the delinquent Assessment, reasonable costs of collection and late charges at ten percent (10%) per annum commencing thirty (30) days after the Assessment becomes due. The Association shall have the right to record a lien against the delinquent Unit Owner and enforce such lien and foreclose upon Unit Owner's interest in the Unit in accordance with the procedures described in Civil Code Sections 5650-5740 and 4040, as further described in Sections 4.14 and 4.15 of this Declaration. The Association's right shall be subject to the limitations imposed by Civil Code Sections 5705-5720 with respect to delinquent assessments that are less than One Thousand Eight Hundred Dollars ($1,800).

Section 4.14 **Transfer of Unit by Sale or Foreclosure; Rights of First Mortgagees.** Sale or transfer of any Unit shall not affect the Assessment lien. However, the foreclosure of a First Mortgage, or the sale of any Unit pursuant to foreclosure of a First Mortgage, shall extinguish the Assessment lien of any Assessments on that Unit (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). No sale or transfer shall relieve such Unit from Assessments thereafter becoming due or from the lien thereof. Where the Mortgagee of a First Mortgage or other buyer of a Unit obtains title to such Unit as a result of Foreclosure, such acquirer of title, and its successors and assigns, shall not be liable for Assessments or other charges of the Association chargeable to such Unit that became due prior to the acquisition of title to such Unit by such acquirer (except for Assessment liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage), except for a share of such Assessments or other charges resulting from a reallocation of Assessments which are made against all Unit. The unpaid share of such Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Unit Owners including such acquirer, or its successors or assigns. If a Unit is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Unit through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Unit to be transferred and the Unit shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the

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statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

Section 4.15 Procedure for Perfection of Lien of Assessment. In the event any Assessment or monthly installment of an Annual Assessment is not paid within fifteen (15) days after the day upon which it becomes due, the Board may deliver a "Notice of Delinquent Assessment" to the Unit Owner of the Unit assessed and may cause a copy of said Notice to be recorded in the Official Records of the City and County of San Francisco. Prior to recording the Notice of Delinquent Assessment, the Association shall provide the Unit Owner with thirty (30) days prior written notice in accordance with the provisions of Civil Code Sections 5650-5740 and 4040, and shall offer to the Unit Owner and, if so requested by the Unit Owner, shall participate in "meet and confer" procedures pursuant to Civil Code Section 5900-5920 and any applicable successor statutes. Said Notice of Delinquent Assessment shall state the amount of the Assessment then due and unpaid which shall include interest, costs and reasonable attorneys fees, a legal description of the Unit against which such Assessment has been levied, the name of the record Unit Owner of such Unit and the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure (if the Association so elects). Such Notice of Delinquent Assessment shall be signed by a representative designated by the Board, and mailed in the manner set forth in Section 2924(b) of the Civil Code, to all record Unit Owners of the Unit assessed, no later than ten (10) calendar days after recordation. When such a Notice of Delinquent Assessment has been recorded, the Assessment described therein shall constitute a lien upon the Unit identified therein which lien shall be prior in right to all other liens thereafter arising except for all taxes, assessments or other levies which by law would be prior thereto and except for the lien of any Mortgage recorded prior to the date any such Assessment became due. Such Assessment lien shall be in favor of the Association and shall be for the benefit of all Unit Owners. If the delinquent Assessment or installment and related charges are paid or otherwise satisfied, the Association shall send to the Unit Owner a "Notice of Satisfaction and Release of Lien" and shall record same in the Official Records of the City and County of San Francisco.

Section 4.16 Enforcement of Lien of Assessment. After the expiration of thirty (30) days following the recording of the lien of any Assessment established pursuant to Section 4.14, and subject to the requirements of Civil Code Sections 5650-5740 and 4040, and other applicable requirements, the Board may enforce the lien by filing an action for judicial foreclosure or, if the Notice of Delinquent Assessment contains the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a "Notice of Default" in the form described in Civil Code Section 2924c(b)(1) to commence nonjudicial foreclosure. Such nonjudicial foreclosure is to be conducted in accordance with the requirements of Sections 2924-2924h of the California Civil Code applicable to the exercise of nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at a foreclosure or trustee's sale and to acquire, hold, mortgage and convey the same. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien and, upon receipt of a written request by the Unit Owner, a "Notice of Rescission of the Declaration of Default and Demand for Sale."

(a) **Right of Redemption**. Pursuant to California Civil Code Section 5715(b), a nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale under this paragraph ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of a Unit in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in Civil Code Section 5715.

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The provisions in Section 4.12 through 4.15 above are intended to comply with the requirements of Civil Code Sections 5650-5740 and 4040 in effect as of the date of this Declaration. If said Civil Code sections are amended or rescinded in any manner the provisions of Sections 4.12 through 4.15 above shall automatically be amended or rescinded in the same manner. The Board should confirm and comply with the current statutory requirements under these Civil Code Sections before initiating any Assessment lien or foreclosure procedures.

Section 4.17 Enforcement of Assessment by Suit. The Association may, in its own name, commence and maintain a suit at law against any Unit Owner or Unit Owners personally obligated to pay Assessments for such delinquent Assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquent Assessments, together with processing fees, interest thereon, costs of collection, court costs and reasonable attorney's fees in such amount as the court may determine with respect to such delinquent Unit Owner. Suit to recover judgment for unpaid Assessments shall be maintained without foreclosing or waiving any lien for such Assessments created pursuant to this Declaration. In any action instituted by the Association to collect delinquent Assessments, accompanying late charges and/or interest, the prevailing party shall be entitled to recover costs and reasonable attorney's fees.

Section 4.18 Suspension for Non-Payment of Assessment. The Board may suspend the voting rights and right to use the Common Area (including, without limitation, the right to use amenities or facilities in the Common Area) of a Member (including, an Owner or Occupant of a Unit, and their Invitees) who is in default in the payment of any Assessment or in violation of any Association Rule, after notice to such Member and an opportunity for a hearing before the Board which satisfies the minimum requirements of Section 7341 of the Corporations Code and as provided in the Bylaws.

Section 4.19 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or any portion thereof, the personal property of the Association or the Development as a whole, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of Section 4.1, and, if necessary, a Special Assessment may be levied against the Units in an amount equal to said taxes to be paid in two installments, each thirty (30) days prior to the due date of the respective tax installment.

Each Unit Owner is obligated to pay any taxes or assessments assessed by the County Assessor against the Unit Owner's Unit and personal property. Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Unit (in addition to any supplemental tax assessments levied against any Unit as a result of the transfer of title from Declarant to the first purchaser), the non-segregated tax amount shall be allocated among all the Units in accordance with an allocation method as may be selected by Declarant or by the Board. Unless paid directly by the Unit Owner, each Unit Owner shall pay the Unit Owner's allocable share to the Association in a timely and proper manner so that the Association may make the non-segregated tax payment in a timely and proper manner. The Association may levy a Special Assessment against the Condominiums to collect the non-segregated tax amount and/or otherwise charge each Owner for its allocable share of such non-segregated tax amounts. Any Unit Owner who breaches the Unit Owner's duty to pay the Unit Owner's allocable share in a timely and proper manner shall be liable for any penalties, interest, fees or other such costs incurred as a result of the breach and the Association may levy an Individual Special Assessment against the Unit Owner's Unit to collect the amount, including any penalties, interest, fees or other costs.

Section 4.20 Review of Accounts, Revenues and Expenses. As provided in Civil Code Section 5500, the Board shall, on at least a quarterly basis:

(a) Review a current reconciliation of the Association's operating accounts.

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(b) Review a current reconciliation of the Association's reserve accounts.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts.

For purposes of this Section 4.19, "review" shall include preparing reasonable documentation of such review.

Section 4.21 Expenditure of Reserve Funds. In accordance with Sections 5510-5520 of the Civil Code, the Board shall not expend funds designated as reserve funds for any purpose other than: (i) the repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established, or (ii) litigation involving the purposes set forth in (i) above. Notwithstanding the provisions of (i) and (ii) above, the Board:

(a) May authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

(b) Shall cause the transferred funds to be restored to the reserve account within one year of the date of the initial transfer; except that the Board may, after giving the same notice required for considering a transfer, and upon, making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Development, temporarily delay the restoration.

(c) Shall exercise prudent fiscal management in maintaining the integrity of the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in (b) above. The Board may, at its discretion, extend the date the payment on the Special Assessment is due; however, any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment. Any such Special Assessments shall be subject to the limitations specified in Section 4.4.

(d) Subject to the provisions of Article 10 below, when the decision is made to use reserve funds or to temporarily transfer funds from the reserve account to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of such expenses on at least a quarterly basis, and such accounting shall be made available for inspection by Members at the Association's office.

(e) The signatures of at least two (2) persons, who shall be members of the Board, or one officer who is not a member of the Board and one member of the Board, shall be required for the withdrawal of moneys from the reserve account.

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Section 4.22 **Reserve Studies.** At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obliged to repair, replace, restore or maintain, as part of a study of the reserve account requirements, if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year, which excludes the Association's reserve account for that period. In addition, the Board shall annually review, or cause to be reviewed, the reserve account study and shall consider and implement necessary adjustments to its analysis of the reserve account requirements as a result of that review. The reserve account study shall at a minimum include the items and components set forth in Civil Code Sections 5550-5570.

Section 4.23 **Capitalization Fund**. Pursuant to the terms of Declarant's Purchase Agreement for the sale of the Condominiums, the initial Owner of each Condominium shall be required to pay to the Association an amount equal to two (2) month's worth of Annual Assessments to be used to establish a capitalization fund (the "Fund") for the Development. The Association shall maintain the Fund in a separate account to be disbursed by the Board to pay for the start-up and initial organization of the Association, the initial occupancy and operation of the Development, additions and upgrades to the Development, and other purposes deemed appropriate by the Board.

ARTICLE 5

MAINTENANCE, REPAIR AND IMPROVEMENT

Section 5.1 **Association's Rights and Obligations to Inspect, Maintain and Repair the Development.** Coincident with the first conveyance of a Unit by Declarant, the Association shall repair, restore, replace and maintain in good condition and appearance all of the Common Area and all facilities, improvements, furnishings, equipment, utilities, water systems, sewers, any and all drains or drainage systems not maintained by a public entity, utility company or improvement district, roadways, walkways and related street, sidewalk and pedestrian lighting not maintained by a public entity, utility company or improvement district, landscaping (except landscaping within Exclusive Use Common Area terraces or balconies) and related improvements and facilities thereon, and all property that may be acquired by the Association, including, without limitation, foundations, siding, trim, roofs, exterior finishes on exterior doors to units (other than the hardware thereon), elevators, amenities and related improvements and equipment, lobbies, Common Area hallways and corridors, life safety equipment and facilities, exterior building staircases, trash, recycling and compost collection areas and related improvements, terraces and courtyards and related improvements. The Association's responsibility for maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any homeowners association handbook, or any applicable maintenance manual or manufacturers manual. Without limitation of the foregoing, the Association shall perform at least the minimum cleaning, maintenance and repair obligations required of the Association on Exhibit D attached hereto, and by this reference made a part hereof.

(a) The Association shall maintain and repair the structural components of the Common Area associated with the Exclusive Use Common Area terraces and balconies, including, without limitation, the floor sealing and any associated waterproofing, sealant or elastomeric membranes below the surface of the flooring; provided, however, that the Owner of the Unit to which any Exclusive Use Common Area terrace or balcony is appurtenant shall maintain and repair any built-up or raised decking, tile, brick or paver covering such terrace or balcony, and any waterproofing treatment to the surface of such built-up or raised decking, tile, brick or paver; provided, further, that each Unit Owner shall be responsible for routine maintenance and cleaning of any Exclusive Use Common Area terrace or balcony area appurtenant to that Unit Owner's Unit, and shall keep any such Exclusive Use Common

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Area in good condition, clean and neat at all times, as further described in Section 5.2 below. The repair or replacement of any of the Condominium Building and any portion of the Common Area shall be of equal or greater grade or quality than the original installation. All maintenance and repair of the Condominium Building and any portion of the Common Area shall be performed by qualified professionals.

(b) In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Units, Exclusive Use Common Areas and Common Area, the Association shall periodically inspect the exterior of the Condominium Building(s) and the Exclusive Use Common Area and Common Area improvements to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(c) In furtherance of the Association's obligations described in this Section 5.1, the Board shall have the obligation to regularly and actively inspect, or cause to be inspected by a qualified professional, the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (including Exclusive Use Common Areas appurtenant to Unit Owners' Units, as described in Section 5.2 below), to determine the need for repairs, replacements, restorations and maintenance in order to keep the Common Area and all facilities, improvements, furnishings, equipment, landscaping in good repair, working order, condition and appearance. The Board shall keep a written record and documentation of the results of such inspections. The Board shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to be performed by a qualified professional in a timely manner. In furtherance of the foregoing, the Association shall inspect, or cause to be inspected by a qualified professional, any Exclusive Use Common Area terrace or balcony appurtenant to a Unit Owner's Unit to determine whether maintenance or repairs may be required.

(d) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act, omission or neglect of an Owner or that Owner's guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his or her guests, co-inhabitants, Occupants, tenants or Invitees, except that if a repair or replacement is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs or replacements, and the responsible Owner shall pay any deductible (or portion thereof, as determined by the Board) pursuant to the insurance policy and the Association may impose an Individual Special Assessment on the responsible Owner in the amount of such deductible, as well as other costs related thereto, as further described in Section 4.6. If the responsible Owner fails to pay such deductible (or portion thereof, as determined by the Board), the Association may make such payment and shall charge the responsible Owner for all costs and fees associated with or arising from such nonpayment, which charge shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate permitted by law) until paid in full. Any inspections, repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, co-inhabitants, tenants or Invitees, or the pets of an Owner or his guests, tenants or Invitees the cost of which is not covered by insurance carried by the Association shall be made by the responsible Owner; provided that the Association approves the person actually making the repairs, which person shall be a qualified professional, and the method of repair and any such repair shall comply with the rules and regulations of

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the Architectural Control Committee as approved by the Board. The Association shall be entitled to charge the costs of inspection, maintenance, repair and replacements to the Common Areas arising out of or caused by the willful or negligent act, omission or neglect of an Owner or his guests, co-inhabitants, Occupants, tenants or Invitees, or the pets of an Owner or his guests, Occupants, tenants or Invitees, to the responsible Unit Owner.

(e) If a Unit Owner fails to make any repairs or replacements for which that Unit Owner is responsible as provided herein this Article 5, then, upon the affirmative vote of a majority of the Board and after notice to the Unit Owner and an opportunity for a hearing before the Board, the Association shall have the right, but not the obligation, to perform such maintenance, repairs or replacements and, if necessary in connection therewith, to enter that Unit Owner's Unit, as further described in Section 5.2 below. The cost of such repairs or replacements shall be paid to the Association by said responsible Unit Owner, as further described in Section 5.2 below.

Section 5.2 **Unit Owner's Right and Obligation to Inspect, Maintain and Repair.** Except for those portions of the Development and Common Area which the Association is required to maintain and repair, each Unit Owner shall, at that Unit Owner's sole cost and expense, maintain and repair that Unit Owner's Unit and Exclusive Use Common Area physically appurtenant thereto, keeping the same in good condition and repair. Each Unit Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, that Unit Owner's Unit and Exclusive Use Common Area appurtenant thereto in order to maintain the Unit and such Exclusive Use Common Area in good repair, condition and appearance. Each Unit Owner's responsibility for inspection, maintenance and repair shall include, without limitation, performance of any inspection, maintenance and repair described in any applicable homeowners manual, maintenance manual or manufacturers manual provided to the Owner by Declarant or its agents or the Association or property manager. Each Owner shall regularly and actively inspect, or cause to be inspected by a qualified professional, that Owner's Unit and any Exclusive Use Common Area terrace or balcony area appurtenant thereto in order to maintain the Unit and such Exclusive Use Common Area in good repair, condition and appearance. Each Owner shall take no action that causes degradation, damage or puncturing to any flooring, wall or surface area of any terrace or balcony area appurtenant to that Owner's Unit, and each owner shall be responsible for any such degradation, damage or puncturing caused by such Owner's action. Each Owner shall notify the Association promptly and without delay in the event such Owner discovers and damage, crack, leak, hole, degradation or other problem with the functioning of any window, door, sliding glass door, flooring, wall, surface area or other portion of a terrace or balcony area appurtenant to that Owner's Unit. Each Owner shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to that Owner's Unit and any Exclusive Use Common Area appurtenant thereto be performed by a qualified professional in a timely manner. 7In addition, each Owner shall perform, without limitation, at least the mininum cleaning, maintenance and repair described on Exhibit D attached hereto.

(a) Each Unit Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items within such Unit Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke and carbon monoxide detectors, and any and all other appliances and kitchen devices of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit, including condensers and compressors (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, countertops, light bulbs; electrical panels and breakers, electrical wiring and other fixtures of any nature whatsoever; "built-in" features; and decorative features, any furniture and furnishings; plumbing pipes, sanitary sewer Lines, drains, flues, heating ducts, telephones lines and equipment, toilets, sinks, shower enclosures and tubs, bathroom fittings such as towel rails, cable, phone and data lines, television Lines or

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equipment or other utility equipment and Lines which serve only that Unit Owner's Unit, no matter where the equipment is located; provided, that any such equipment located in the Common Area shall be maintained and repaired by the Association, or a licensed contractor approved by the Association and the such maintenance, repair and/or replacement costs shall be paid by the Unit Owner of the Unit. In furtherance of the foregoing, each Unit Owner shall bear the cost of any clearing of blockage and damage repair to any toilet or lateral sanitary sewer line which serves only that Unit Owner's Unit. If the Unit Owner fails to pay the cost for such maintenance or repairs, the Association may levy an Individual Special Assessment against the Unit Owner's Unit to reimburse the Association for costs incurred. If the utility equipment or Lines serve two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment or Lines, a portion of which exclusively benefits one Unit and a portion of which benefits two or more Units, the Board shall allocate the cost between the Unit Owner and the Association in a fair and equitable manner.

(b) Notwithstanding that the Association shall maintain and repair the structural components of the Common Area associated with the Exclusive Use Common Areas terraces and balconies, including, without limitation, the floor sealing and any associated waterproofing, sealant or elastomeric membranes below the surface of the flooring (as further described in Section 5.1 above), each Owner of a Unit to which any Exclusive Use Common Area terrace or balcony is appurtenant shall (i) maintain and repair any built-up or raised decking, tile, brick or paver covering such terrace or balcony, and any waterproofing treatment to the surface of such built-up or raised decking, tile, brick or paver, (ii) be responsible for routine maintenance and cleaning of any such terrace or balcony , (iii) keep any such terrace or balcony in good condition, clean and neat at all times, (iv) maintain any landscaping located on any such terrace or balcony that is not designated for stormwater management purposes (which shall be responsibility of the Association), and (v) be responsible for the maintenance and repair of any personal improvements to any such terrace or balcony. Any maintenance, repair or improvement to any terrace or balcony appurtenant to an Owner's Unit by such Owner shall be subject to applicable architectural rules and regulations as described in this Declaration. No Owner or Occupant of a Unit shall install, modify, alter, construct, remove or add any built-up flooring, decking, tile or other floor covering to any terrace or balcony area without the prior written approval of the Board. Reference is made to the architectural control provisions in Section 7.27 of this Declaration.

(c) Each Unit Owner shall keep any drain(s) located on that Unit Owner's Exclusive Use Common Area terrace or balcony clear, free of obstruction and in good working condition, and shall promptly report any problems with functioning of the drain to the Association.

(d) Each Owner shall take no action or allow inaction that causes degradation, damage or puncturing to any flooring or surface area of any Exclusive Use Common Area terrace or balcony appurtenant to that Owner's Unit, and each owner shall be responsible for any such degradation, damage or puncturing caused by such Owner's action or inaction. It is the duty of each Owner to notify the Association promptly and without delay in the event such Owner discovers any damage, crack, leak, hole, degradation or other problem with the functioning of any portion of any terrace or balcony appurtenant to that Owner's Unit.

(e) Each Unit Owner shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to that Unit Owner's Unit and any Exclusive Use Common Area appurtenant thereto. The repair or replacement of any of the Condominium Building and any portion of the Common Area shall be of equal or greater grade or quality than the original installation. All maintenance and repair of the Condominium Building and any portion of the Common Area shall be performed by qualified professionals.

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(f) Each Unit Owner shall maintain, repair and replace any smoke and carbon monoxide detectors located in that Unit Owner's Unit. The Association shall maintain any fire sprinkler heads and related systems located in any Unit, provided that each Unit Owner shall immediately notify the Association of any problems with any automatic sprinkler heads located the Unit Owner's Unit. It is Owner's responsibility to keep any such fire and life safety systems in the Owner's Unit clear of any obstructions.

(g) Subject to the Association Rules and Section 7.27 below, each Unit Owner shall have the exclusive right to paint, plaster, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors and doors bounding that Unit Owner's Unit in a manner which does not intrude on or into the Common Area, which does not involve mechanical or structural elements of the Common Area, which does not transmit unreasonable noise or vibration through the Common Area (including without limitation, floors, ceilings and walls), as reasonably determined by the Board and which is not visually offensive to persons of ordinary sensibilities viewing from the Common Area or public areas as reasonably determined by the Board. Any modification of flooring within a Unit shall be subject to Section 7.27 below. In the event a Unit Owner fails to maintain the interior of his Unit or fails to perform routine cleaning and maintenance of any Exclusive Use Common Area to which he has an easement or assignment in a manner which the Board deems necessary or appropriate to preserve the appearance and value of the Development, the Board may notify the Unit Owner of the work required and request that the Unit Owner complete such work within sixty (60) days from the date such notice was given to the Unit Owner. In the event said Unit Owner fails to complete such work within said period, the Board may, after written notice to the Unit Owner and an opportunity for a hearing before the Board, cause such work to be done and the cost of such work shall be a monetary penalty enforceable according to the provisions of the Bylaws and this Declaration and shall be payable to the Association by such Unit Owner.

(h) **Maintenance Duties of Commercial Unit Owners**. Each Commercial Unit Owner shall be responsible for inspecting, maintaining, repairing and replacing (i) that Owner's Commercial Unit, (ii) utilities exclusively servicing the Commercial Unit, and (iii) the windows and glass doors enclosing the Commercial Unit (except to the extent that such repair or replacement is covered by casualty insurance required by this Declaration to be maintained by the Association). Each Commercial Unit Owner shall be responsible for obtaining pest control within that Owner's Commercial Unit, at the sole cost and expense of the Commercial Unit Owner. Upon forty-five (45) days written notice to a Commercial Unit Owner, the Association shall have the right to perform any such activities described in this subsection, if the Commercial Unit Owner fails to do so, and charge such costs and expenses related thereto to the Commercial Unit Owner. Any such utilities, Lines equipment located in the Common Area shall be maintained and repaired by the Association, or a licensed contractor approved by the Association, and such maintenance, repair and/or replacement costs shall be paid by the Owner of the Commercial Unit. A Commercial Unit Owner shall provide reasonable evidence that activities described in this subsection have been performed if requested by the Association.

(i) To the extent the items listed below serve a Commercial Unit exclusively, and subject to the Association Rules and any architectural guidelines for the Commercial Units adopted by the Board, the maintenance, repair and cleaning of the following items and/or portions of the Commercial Units shall be the sole responsibility of the Commercial Unit Owner served thereby at its/their sole cost and expense: (i) interior walls, (ii) storefront doors and related hardware and locks, (iii) window casements, (iv) glazing, (v) plumbing, (vi) pipes, (vii) electrical services and equipment, (viii) floors, (ix) heating, ventilating and air conditioning (HVAC) systems and related equipment, (x) ancillary fire suppression systems and equipment, (xi) any trash area dedicated for the exclusive use of the Commercial Unit(s) (if any). Costs related to maintenance, repair, cleaning involving more than one

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Commercial Unit shall be allocated among the affected Commercial Unit Owners by the Board in a fair and equitable manner.

(ii) As required by local ordinance, and subject to the provisions of Section 5.1 above, the Association shall be responsible for the structural repair of the sidewalks and driveway in front of the Condominium Building; provided that each Commercial Unit Owner shall keep the sidewalks directly adjacent to and in front of such Owner's Commercial Unit clean and neat.

Section 5.3 Maintenance of Landscaping. The Association shall maintain all of the landscaping within the Development (other than landscaping located in a Exclusive Use Common Area terrace or balcony appurtenant to a Unit Owner's Unit, which shall be the responsibility of such Unit Owner, subject to Section 6.8(b)), if any, in general accordance with the landscaping plans as originally installed unless climatic conditions make such maintenance impracticable or unless the Board consents to a change in the plan for the landscaping.

Section 5.4 Access at Reasonable Hours. For the purpose of performing the inspection, maintenance, repair and/or replacement authorized by this Article 5, the Association's agent(s), employee(s) or hired service providers shall have the right, after reasonable written notice to the Unit Owner (received by Unit Owner pursuant to Section 11.12 not less than forty-eight (48) hours prior to entry, unless an emergency exists, in which case no written notice need be given), to enter any Unit during reasonable hours with as little inconvenience to the Unit Owner as is practicable.

Section 5.5 Capital Improvements by Association. The Association may purchase furniture or fixtures or may construct or cause to be constructed capital improvements upon the Common Area; provided, however, that the Association shall not incur in any fiscal year aggregate expenses for such purchases and construction which exceed five percent (5%) of the budgeted gross expenses of the Association for such fiscal year without the vote or written assent of a majority of each class of Members or, in the event Class B shares have been converted to Class A shares, the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than Declarant.

Section 5.6 Basement and Garage Walls. The basement areas are constructed at sub-grade level. Due to ground water migration during periods of rainfall or an increase in the water table, portions of the Property at the sub-grade level can be expected to respond to the moisture differently than the portions of the Property which are above grade. The Development is being constructed with the understanding and anticipation that due to ground water migration and deep basement configuration there will be more wall moisture than in a structure above grade. Surface wetness and pooling of water in the garage and basement areas is expected in the construction of this type of assembly, and will not compromise the structure. Efflorescence and wetness may form on the walls of sub-grade levels. Pooling of water may occur and form puddles. It is also possible for the water pooling on the flooring decks to run to small cracks that naturally occur in the flooring deck slabs. Water may also come into the garage from access ramps and vehicles. All such water in the garage could damage vehicles that are being dripped on. The Association should regularly inspect, maintain and repair any such pooling or leakage of water. The materials have been chosen to accommodate these conditions. The presence of moisture or water *per se* is not equivalent to a leak. The surface moisture and pooling of water in the garage and basement areas, and some efflorescence, are expected, and should not be considered as evidence of a defect. Atmospheric conditions coupled with below-grade construction will typically result in some moisture and presence of water, and this should be considered as normal. The Association should conduct routine, periodic inspections of the walls of the garage at the sub-grade levels and monitor the effect of the surface moisture and any pooling or puddles of water. Aside from this minor wall moisture,

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pools or puddles, any leaks discovered by the Association will need to be addressed promptly to assure that any property damage is repaired, and the structure is not impaired.

Section 5.7 Storm Drains/Stormwater. The Development complies with the City of San Francisco's Storm Water Management Ordinance to incorporate Low Impact Development (LID) measures to remove pollutants from stormwater runoff, reduce stormwater volume, attenuate stormwater peak flow, and improve stormwater quality from the Development prior to discharge to the City's combined storm and sewer system. The system designed for the Development utilizes some of the planters as filters for a portion of the rainwater captured on the Development's roof areas. There is also a sand/oil interceptor on the Property. The Association will be responsible for the following maintenance:

(1) Annual inspection of the inlets, outlets and overflow structures for proper drainage of the planters.

(2) Routine cleaning of debris buildup within the planters.

(3) Periodic replacement of the soil as necessary for filtration.

(4) Routine vegetation maintenance.

(5) Regularly water during the first three months as vegetation is established.

(6) Add mulch to bare areas semi-annually at the beginning and end of each rainy season.

(7) Annual re-grading of soil surface if erosion or scouring has occurred.

A Stormwater Control Plan detailing the maintenance requirements and identifying the planters will be provided by the Declarant to the Association. Some of the planters are located on Exclusive Use Common Area terraces appurtenant to Residential Units, as described in Section 6.8(b).

ARTICLE 6

UTILITIES AND EASEMENTS

Section 6.1 Unit Owners' Rights and Duties. The rights and duties of the Unit Owners with respect to sanitary sewer, water, cable or satellite television, electricity, gas, internet and telephone Lines and facilities and heating and air-conditioning facilities shall be as follows:

(a) Whenever sanitary sewer, water, cable or satellite television, telephone, internet, electricity, gas, heating or air-conditioning conduits, HVAC system, ducts or flues are installed within the Development, which connections, or any portion thereof, lie in or about or adjacent to Units owned by a Person other than the Owner of a Unit served by said connections, the Association shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the appropriate utility companies or service providers enter the Units after reasonable notice and during reasonable hours (except, in the event of an emergency in which case entry may occur at anytime without notice), in or about which said connections, or any portion thereof, lie to repair, replace and generally operate, monitor and maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, cable television, internet, telephone, electricity, gas, heating or air-conditioning conduits, HVAC system, ducts or flues are installed within the

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Development which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to full use and enjoyment of such portions of said connections as service his Unit. The Owner and Occupants of a Unit shall not take any action that would in any manner interfere with the operation of the utility lines or equipment serving any other Unit.

(c) Whenever internal and external telephone wiring for a Unit, or any portion thereof, lies in or about the Development, the Unit Owner of the Unit served by such wiring shall be entitled to reasonable access to the Development for the purpose of maintaining such wiring. Said access shall be subject to the consent of the Board whose consent shall not be unreasonably withheld and which may include the Association's approval of telephone wiring upon the exterior of the Common Area and other conditions as the Board determines reasonable.

(d) In the event of a dispute between Unit Owners with respect to the repair or rebuilding of the above-described connections, or with respect to the sharing of the cost thereof, then, upon request of one of such Unit Owners addressed to the Association, the matter shall be submitted to the Board who shall hold a hearing and decide the dispute and the decision of the Board shall be final and conclusive upon the parties.

(e) Any air heating, air conditioning, water heating equipment, HVAC unit, lighting fixtures and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be maintained and repaired by the Owner of the Unit served by said equipment; provided that an Owner shall not access or open up any Common Area wall, roof or other portion of the Common Area, and shall not perform any work on any common utility Lines or systems without prior written approval by the Association. Notwithstanding the foregoing, while the air heating, ventilation and air conditioning (HVAC) unit serving a particular Unit shall be maintained and repaired by the Owner of such Unit, the maintenance and repair of any Lines, piping or conduits for such HVAC unit that are located within the Common Area walls, ceilings or floors, or other portions of the Common Area, regardless of the number of Units served, shall be performed by the Association, or a licensed contractor approved by the Association; provided, however, such maintenance, repair and/or replacement costs shall be paid by the Owner of the Unit served by such air heating, ventilation and air conditioning (HVAC) system and equipment, and any associated costs incurred by the Association may be charged to such Owner served thereby and such Owner shall pay such costs to the Association, provided that if any such equipment serves two or more Units, such costs shall be allocated equally to the Unit Owners by the Association and each such Owner shall pay its allocated share of such costs to the Association.

(f) **Ventless Clothes Dryers**. There are no hook-ups, conduits or facilities for vented clothes dryers in any Unit. Vented clothes dryer appliances shall not be operated in any Unit. Only ventless electric clothes dryers may be used in the Units, subject to Association Rules.

Section 6.2 **Association's Duties.** The Association shall maintain all utility connections, water systems, sanitary sewers, drainage and storm drainage facilities located in the Common Area, except for those installations maintained by utility companies whether public, private or municipal. All such drainage, sewers and storm drainage facilities shall be regularly inspected and, if necessary, cleaned or otherwise maintained. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Units. Reference is made to Section 5.1 of this Declaration for further detail concerning Association maintenance obligations.

Section 6.3 **Easements for Utilities and Maintenance; Commercial Unit Improvements.** Easements over and under the Development for (a) the installation, operation, repair and maintenance of electric, telephone, water, gas and sanitary sewer Lines and facilities, (b) heating and air-conditioning Lines and facilities, (c) cable or master television antenna Lines and facilities, (d) storm drains and

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drainage Lines and facilities, and (e) walkways, pedestrian and vehicle accessways and landscaping, as such easements are recorded or are needed to service the Development or any portion thereof, are hereby reserved by Declarant and Declarant's successors and assigns together with the right to grant and transfer the same.

(a) Subject to architectural review and approval by the Association as described in Section 7.27(m) and other conditions and restrictions as stated herein, the Owners of the Commercial Units shall have the right to install, maintain, repair and replace, and shall have easement(s) for, any utilities and related equipment or Lines in the Common Area as are reasonably necessary to conduct the businesses contained in the Commercial Units, which right shall include the right to install, maintain, repair and replace utilities facilities, a central radio and/or television antenna system, cable television system, satellite dish or other central television reception system on the roof of the Condominium Building. Such right shall include without limitation the right of access to and use of the Common Area as needed to perform such installation, maintenance, repair and replacement, and the right to cause the walls, ceilings, floors of the Condominium Building to be opened up for the purpose of such installation(s) and any related maintenance, repair and replacement, subject to the reasonable approval by the Board. No such utilities, Lines, or equipment shall be installed in any portion of the Development without first obtaining all required permits and approvals from the San Francisco Planning Department, Department of Building Inspection and all other applicable agencies. Notwithstanding the foregoing, any such utilities, Lines, or equipment shall be installed in such location(s) within the Condominium Building that will cause minimal intrusion to the Residential Unit Owners and Residential portions of the Condominium Building, as determined by the Board in its reasonable discretion. The Commercial Unit Owners shall be responsible for all work in installing, operating, maintaining and replacing any utility, Lines or equipment described in this Section serving the Commercial Units exclusively, including, without limitation, safety, clean-up, temporary facilities, repair and restoration of finishes. The Commercial Unit Owners shall provide at least forty eight (48) hours prior notice to the Association before commencing any such work within the Common Area. Exhaust fans, vents, HVAC systems, grease traps and related equipment for use in connection with any cooking or kitchen facilities in the Commercial Units shall not be permitted without the prior written approval of the Board, in its discretion.

Section 6.4 **Easements for Ingress, Egress and Support.** Unless designated Exclusive Use Common Area, which use is restricted as described on the Condominium Plan or this Declaration for the benefit of less than all Units, there is appurtenant to each Unit nonexclusive rights of ingress, egress and support, if necessary, through, on, upon or over the Common Area, subject to the Association Rules.

Section 6.5 **Encroachment Easements.** In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or Condominium Plan. As such, each Unit and Exclusive Use Common Area within the Development is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, movement, settlement or shifting of any building or any similar cause. Each Unit, or portion thereof, and the Common Area as the dominant tenement has an easement over any other Unit, or portion thereof, or the Common Area, as applicable, as the servient tenement for the purposes of accommodating any such encroachments described in the previous sentence. In addition, each Unit is subject to such encroachments by the Common Area as may now exist or may hereafter be created by any of the causes referred to in this Section. There shall be valid easements for the existence and maintenance of said encroachments as long as they shall exist and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional act of willful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed and is then repaired or

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rebuilt in substantially the same manner as originally constructed, the Owners of each Condominium agree that minor encroachments over adjoining Units or the Common Area due to such reconstruction shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units where HVAC equipment, water/utility shut-off valves or other utility facilities are installed, an easement over the Common Area into which said equipment encroaches shall exist for the purpose of maintenance, replacement and repair of said equipment.

Section 6.6 Right to Grant Easements and Licenses. In addition to the designated Exclusive Use Common Areas shown on the Condominium Plan, Declarant reserves the right to grant easements or licenses over, under, across or through the Common Area for the use by any third party, an Owner or Owners of contiguous property, the general public or government agency. Any such easement or license may be conveyed or established by the Declarant before the last close of escrow for sale of a Unit in the Property. The purpose of the easement or license, the portion of the Common Area affected, the Unit to which the easement is appurtenant (if applicable), and any restrictions on use of the easement area shall be identified in a written document executed the grantor and grantee, and with respect to an easement, recorded in the Official Records. No such grant of easement or license shall give rise to any right to compensation or adjustment of a sales price for a Unit by refund or otherwise.

Section 6.7 Right of Entry.

(a) Association. The Association shall have the right to enter each Condominium and Exclusive Use Common Area to inspect the Development, and may take whatever corrective action it determines to be necessary or proper, consistent with this Declaration and the Governing Documents. The Association shall have the right to enter any Unit in order to perform any maintenance, repair and/or replacement obligations of the Association pursuant to this Declaration, which right shall include, without limitation, an easement over any corridor or demising walls that may be located within the airspace or boundaries of a Unit. Such right of entry to any Unit in favor of the Association shall include, without limitation, the right to access, inspect, maintain, repair and replace any air heating, air conditioning, HVAC and water heating equipment; plumbing, water and sewer Lines; telecommunication, internet and television Lines; electrical Lines; lighting fixtures; and any outlets or conduits thereof that may be located within the airspace or boundaries of a Unit but serve two or more Units or the Common Area. Entry onto any Condominium Unit or Exclusive Use Common Area under this subsection may be made after at least forty-eight (48) hours advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Condominium or and Exclusive Use Common Area caused by entry under this subsection shall be repaired by the Association.

(b) Declarant. Declarant hereby reserves for itself, and for its agents, employees, contractors and/or subcontractors (collectively, "Declarant Parties") the right to enter any Unit, Exclusive Use Common Area and the Common Area (i) to inspect any Unit, Exclusive Use Common Area and the Common Area, and all improvements thereon, (ii) to complete and/or maintain or repair any improvements within any Condominium Unit, Exclusive Use Common Area and/or the Development Declarant determines necessary or proper, in its sole discretion, (iii) to perform any warranty work Declarant determines necessary or proper in its sole discretion, (iv) to comply with requirements for the recordation of the Map or Condominium Plan or the grading or construction of the Development, and (v) to comply with requirements of applicable governmental agencies. Declarant shall provide at least forty-eight (48) hours notice to an Owner prior to entry into the Owner's Unit or Exclusive Use Common Area under this subsection except for emergency situations, which shall not require prior notice, but shall require notice to the Owner within seven (7) days after such entry was made. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After the inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations for action Declarant Parties believe is appropriate for the Association to take

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to maintain improvements for which the Association is responsible. Any physical damage caused by entry under this subsection shall be repaired by the Declarant or the Declarant Party that caused the damage. This right of entry includes, but is not limited to, entering into one Unit or Exclusive Use Common Area to perform work which benefits another Unit(s) or Exclusive Use Common Area. Unless otherwise specified in the initial grant deed of the Condominium Unit from Declarant, this right of entry shall automatically expire eleven (11) years from the last close of escrow for the sale of a Condominium in the Development.

Section 6.8 Access to Residential Units, Terraces and Balconies for Window Washing; Landscaping Planters; Stormwater Collection and Drainage. Without limiting any of the forgoing easements or rights of access to the Residential Units described in this Article 6 or elsewhere in the Declaration, there shall be easements over the Units and Exclusive Use Common Area terraces and balconies appurtenant thereto in favor of the Association for the following purposes:

(a) Window Washing. The Association has the right to enter each Unit and any Exclusive Use Common Area terraces and balconies in order to perform the periodic washing of the exterior windows of the Condominium Building. Entry onto any Unit under this subsection may be made after at least forty-eight (48) hours advance written notice to the Unit Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Unit or any Exclusive Use Common Area terrace or balcony appurtenant thereto caused by entry under this subsection shall be repaired by the Association. Each Owner and Occupant of a Unit is obligated to cooperate with the Association in connection with the Association's exercise of its rights hereunder.

(b) Landscaping; Planters; Stormwater Collection and Drainage. The Development includes certain landscaping planters and related improvements that are utilized for stormwater collection and drainage as required by the City. These planters and related improvements may be located in the Common Area and/or in Exclusive Use Common Area terraces and balconies appurtenant to certain Residential Units. The Association has the right to enter each Unit and any Exclusive Use Common Area terraces or balconies appurtenant thereto in order to perform installations, maintenance, repair, replacement and upkeep of any planters, landscaping and related drainage or stormwater collection and drainage improvements or facilities located on such terraces or balconies or in the Common Area, including, without limitation, any planting and activities related thereto. Entry onto any Unit under this subsection may be made after at least forty-eight (48) hours advance written notice to the Unit Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Unit or any Exclusive Use Common Area terraces or balconies appurtenant thereto caused by entry under this subsection shall be repaired by the Association. In order to ensure that such stormwater collection and drainage planters, landscaping and related improvements function as designated, any Owner with a Exclusive Use Common Area terrace and balcony appurtenant to its Unit that includes any such stormwater collection and drainage planter and landscaping shall obtain the approval of the Association before changing or replacing any landscaping or other improvements. At a minimum, the following Units may be accessed as described above: 209, 210, 211, 312, 509, 701, 702, 703 and 704.

Section 6.9 Public Easements. There shall be easements over portions of the Development in favor of the general public or government agency(ies) as shown and described on the Map, the Condominium Plan, as required by the City or other state or local governmental agencies, and as may be declared, reserved or agreed upon by Declarant as provided in this Declaration.

Section 6.10 Communications Facilities. Declarant hereby reserves for its benefit and for the benefit of Declarant Parties, and grants to the Association on a nonexclusive basis, the right to install, maintain, repair and replace a satellite, antennae or other communications device on any roof of any building area in the Development, provided that such installation shall be in conformance with all

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applicable laws and regulations. So long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Development, Declarant shall have the sole right and authority approve such installation, maintenance, repair and replacement of a satellite, antennae or other communications device(s). After such time, such matters must be approved by the affirmative vote of a majority of Members represented at a meeting once a quorum has been established pursuant to meeting and voting procedures described in Article 4 of the Bylaws.

Section 6.11 Window Washing Equipment; Building Exterior Maintenance Equipment. Declarant hereby reserves and grants to the Association a non-exclusive easement over the roof areas in the Development and over any Exclusive Use Common Area terrace or balcony areas as reasonably necessary for the maintenance, storage and operation of window washing eqnipment and other building exterior maintenance equipment as may be reasonably necessary to wash windows within the Development and to perform the Association's inspection, maintenance and repair obligations under this Declaration. Such easement rights include, without limitation, the right of the Association to access any portion of the Condominium Building, Units, and Exclusive Use Common Area terrace or balcony areas, as may be reasonably necessary to use, operate, maintain, repair and replace such equipment. Each Owner is obligated to cooperate with the Association in connection with the Association's exercise of its rights hereunder. Each Owner and occupant of a Unit shall cooperate with the Association to provide access through the Unit in connection with access to and use of any such equipment and washing of the windows and maintenance of building exteriors which are the responsibility of the Association. At a minimum, the following Units may be accessed as described above: 406, 509, 606, 701, 702, 703 and 704.

Section 6.12 Easements and Rights in Favor of Declarant.

(a) Easements for Construction, Marketing; Inspection, Maintenance and Repair. Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, together with the right to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over, across and under, any portions of the Property as is reasonably necessary or desirable to: (1) undertake and complete the work of development, construction, sales, marketing, leasing, conveyance and/or inspection, maintenance, repair and replacement of any improvements on the Property, and (2) perform any warranty activities or rights to inspect, repair or replace granted to Declarant under this Declaration, the Limited Warranty, any other warranty or applicable laws or regulations; provided that such rights do not impose any obligation on Declarant to perform any inspection, maintenance, repair or replacement unless otherwise required by the Declaration. The rights described herein shall also include the right of Declarant to temporarily restrict access to certain areas of the Property in connection with such activities.

(b) Easements for Signage Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, easements on, over, under, through and across the Common Area to install, maintain, repair and replace, identification, promotional, sales, marketing, leasing and other signage, banners, flags, and other advertising materials required or deemed necessary by Declarant, including, without limitation, any signage in connection with the exercise of the rights described in Section 11.4 of this Declaration.

(c) Declarant's Easements to Exercise Rights. Declarant hereby reserves to itself, with the right and power to grant the same, a non-exclusive easement over the Property to perform its duties and exercise its rights, powers and obligations under this Declaration, including, without limitation, the rights and powers described in Section 11.4.

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(d) **Installation of Additional Improvements.** Declarant hereby reserves to itself, for its benefit and the benefit of any Declarant Parties, with the right and power to grant the same, the right to install and operate within the Common Area such landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, utility, internet, television and telecommunication facilities, infrastructure and other facilities and improvements, as may be deemed appropriate by Declarant and/or required by applicable laws or regulations or in connection with the issuance of any permits or approvals for the benefit of Declarant; provided that such right does not impose any obligation on Declarant to perform any such activities unless otherwise required by the Declaration. In addition, Declarant hereby reserves to itself a non-exclusive easement over, upon, under and across the Common Area for purposes of access to the Property as may be reasonably necessary in connection with such activities.

Section 6.13 Suspension of Rights to Use Common Area Amenities. All of the easements in favor of the Unit Owners are subject to the right of Declarant and the Association, after notice and hearing, to temporarily suspend a Unit Owner's rights as a Member (as well as the rights of a Tenant or Occupant of a Unit Owner) to use any Common Area amenities pursuant to the terms of the Governing Documents.

ARTICLE 7

USE RESTRICTIONS

In addition to all of the conditions and covenants contained herein, the use of the Development and each Unit therein is subject to the following restrictions:

Section 7.1 Residential Units. No Residential Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and guests, and no trade or business shall be conducted in any Residential Unit, except that Declarant, its successors or assigns, may use any Residential Unit or Units in the Development owned by Declarant for a model home, sales, leasing and marketing office, construction management office, Association office and/or customer service office until the last Condominium on any portion of the Property is sold and escrow closed by Declarant. A Residential Unit may be used as a residence with an included executive or professional office by the Owner or other occupant of the Unit, thereof, provided that (i) such use does not unreasonably interfere with the quiet enjoyment by other Residential Unit Owners of their Residential Units, (ii) there is no signage visible from the exterior of the Unit, (iii) such use does not include visiting clients or employees, and (iv) such use is in compliance with local codes and ordinances.

(a) Residents shall be limited as follows: With the exception of infants and children, no more than two (2) persons per bedroom in any Residential Unit shall be permitted as permanent residents. A "permanent resident" means any person residing in a Residential Unit more than sixty (60) days out of any twelve (12) consecutive month period. One (1) person shall be allowed as a permanent resident in addition to the maximum number of permanent residents otherwise permitted in each Residential Unit. For purpose of this Section, studio Units shall be considered 1-bedroom Units.

(b) No health care facilities operating as a business or charity shall be permitted in the Residential Units.

(c) No Residential Unit or any portion of any Residential Unit in the Development shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "vacation rental," "travel club," "extended vacation," or other membership or time interval ownership arrangement. Short term rentals or leasing of a Residential Unit or room or space therein, or otherwise

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providing short term accommodation or lodging to third parties in a Residential Unit or room or space therein, for a period of time less than that permitted by Section 7.7 below, shall not be permitted. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy or possess the Residential Unit or Units, or any portion of the Residential Units in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of less than 1 year. Provided, this Section shall not be constructed to limit the personal use of any Residential Unit or any Portion thereof in the Development by any Owner or his social or familial guest.

Section 7.2 **Commercial Units**. Except as provided in this Section 7.2, all restrictions of Article 7 shall apply to the Commercial Units. The provisions of Sections 7.1, 7.7, 7.8, 7.9, 7.13, 7.15, 7.17, 7.18, 7.24, 7.26 and 7.27 (except 7.27(n)) shall not be restrictions on the use of the Commercial Units. The provisions of this Section 7.2 shall not be amended without the prior written consent of the Commercial Unit Owners.

(a) **Commercial Use**. The Commercial Units shall be occupied and used solely for commercial purposes by the Commercial Unit Owners and their tenants or lessees. Except for restrictions identified in Section 7.2, the Commercial Unit Owners may use or lease the Commercial Units for any commercial uses permitted by the San Francisco Planning Code in the zoning district in which the Development is located. The Association, Board and Residential Unit Owners shall not have the right to restrict the use, operation or leasing of the Commercial Units or any individual commercial space contained therein. There shall be no rule, restriction or limitation on the use of the Commercial Units or any individual commercial space contained therein except as specifically provided in this Section 7.2 or otherwise provided in this Declaration. The Commercial Units and individual commercial spaces contained therein shall be used in strict conformity with the San Francisco Planning Code and applicable San Francisco zoning ordinances. Any lease of all or a portion of a Commercial Unit or any individual commercial space contained therein shall expressly provide that it is subject to the provisions of the Governing Documents.

(1) The following uses shall not be permitted in any Commercial Unit: (i) nightclub, (ii) disco, (iii) bowling alley, (iv) billiard parlor, (v) amusement arcade, (vi) theater of any kind, (vii) adult book store, (viii) adult theatre, (ix) adult amusement facility, (x) any facility selling or displaying pornographic materials or having such displays, (xi) any facility for the sale of paraphernalia for use with illicit drugs, (xii) an adult book or entertainment store; (xiii) a store primarily established for the sale of liquor and excluding any retail store selling only premium wines; (xiv) an automobile repair facility; (xv) a paint or hardware store selling flammable or other hazardous materials; (xvi) a discount convenience store (provided a grocery store that sells liquor or adult magazines in the ordinary course and not as a material component of its inventory shall not be deemed to violate the terms hereof); (xvii) blood bank; (xviii) health services offering overnight care; (xix) drug rehabilitation center; (xx) massage parlor; (xxi) funeral home; (xxii) sleeping quarters or lodging; (xxiii) off track betting establishment; (xxiv) bingo hall; (xxv) denominational places of worship; (xxvi) a dry cleaner with any on-site cleaning equipment; (xxvii) cannabis or medical marijuana dispensary or similar establishment; (xxviii) cannabis cultivation facilities; (xxix) cannabis clubs, collectives or smoking lounges; or (xxx) business or use providing live animal services, such as pet hospital, pet store, dog washing or pet boarding.

(2) Restaurants, cafés or markets containing only limited kitchens and cooking facilities and serving breakfast, lunch, dinner and/or alcoholic beverages shall be permitted in any portion of any Commercial Unit in the Development.

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(3) The Commercial Units and any individual commercial spaces contained therein shall be permitted to stay open for business during the hours permitted by the applicable ordinances of the City and County of San Francisco, including opening as early in the morning, and remaining open for business as late at night, as permitted by the applicable ordinances of the City and County of San Francisco. In furtherance of the foregoing, and without limitation, any Commercial Unit and any individual commercial tenant space contained therein shall be permitted to be open for business at least between the hours of 6:00 a.m. and 12:00 midnight daily.

(4) The Commercial Unit Owners and Commercial Tenants shall be permitted to use all portions of the sidewalk adjacent to and in front of a Commercial Unit for outdoor or patio seating and customer service from the hours of 7:00 a.m. through 10:00 p.m. seven days a week, subject to permits granted by the San Francisco government agencies, and shall be permitted to install and use outdoor heaters in all such areas during such hours.

(5) The Commercial Unit Owners and Commercial Tenants shall be permitted to keep the windows of a Commercial Unit open from the hours of 7:00 a.m. through 9:00 p.m., and on Friday and Saturday nights the windows may remain open until 11:00 p.m.

(6) Amplified or recorded music and television shall be permitted within the interior of a Commercial Unit and in any individual commercial space contained therein; however, no outdoor speakers shall be allowed (except for special events with permission from the Board), and indoor speakers shall not be pointed directly towards the doors or windows such that music may be unreasonably heard from outside the Commercial Unit. The volume of the music and/or television within the Commercial Units or any individual commercial space shall be maintained at a level to minimize excess noise and vibration to the Residential Units above and passersby on the adjacent sidewalk.

(7) In order to reduce noise levels in connection with the Commercial Units and the individual commercial spaces therein, the Owners of the Commercial Units and the tenants of the individual commercial spaces shall take the following precautions:

(i) Exhaust fans shall generally be turned off after the close of business once any clean up and/or maintenance or repair activities are completed.

(ii) Reasonable care shall be taken to reduce noise when removing trash, recyclables and related items from a Commercial Unit and individual commercial spaces to and from the trash areas of the Development to the street for pick up.

(iii) Self-closing doors located in commercial portions of the Building shall be equipped with devices to prevent doors from slamming shut and causing excessive noise.

(iv) Deliveries to the Commercial Units or individual commercial spaces therein shall not be permitted between the hours of 11:00 pm and 5:00 am.

(v) The Commercial Unit Owners and commercial tenants shall not make material changes to the structure or covering of the walls, floors and/or ceilings that would unreasonably increase noise transmission to the Residential Units.

(8) Any alarm installed in a Commercial Unit shall be the type of alarm which is monitored by a certified alarm monitoring company.

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(9) Notwithstanding anything to the contrary in this Declaration, if a Commercial Unit Owner installs an Automated Teller Machine (ATM) in one of the Commercial Units, including, without limitation, an ATM installed in the exterior wall of a Commercial Unit for use by the general public from the street, then such ATM shall be permitted to remain open for business twenty-four (24) hours a day, seven (7) days a week.

(10) The Commercial Unit Owners shall be permitted reasonable use of (i) the parking garage area and garage door (for use by the Commercial Unit Owner or tenant of the Commercial Unit Owner and their agents and tenants only; not for use by the customers, clients, patrons or guests of the Commercial Unit); (ii) electric metering equipment subject to utility provider rules and regulations, (iii) mechanical equipment located in the Common Area and serving the Commercial Units; (iv) the roof and the garage of the Condominium Building for installation, maintenance and repair of ventilation and other equipment serving the Commercial Units or any individual commercial tenant space; (v) any corridors or other portions of the Common Area containing any mechanical, electrical or other equipment serving the Commercial Units or any individual commercial tenant space; (vi) the subterranean garage area for installation, maintenance and repair of plumbing and other equipment serving the Commercial Units or any individual commercial tenant space, and (vii) use of trash room.

(b) **Commercial Unit Advertising; Signage; Lighting**. The Commercial Unit Owners shall have the right to install reasonable signage, window displays, lighting, horizontal sign extensions and window appliqués on the exterior of the Development, subject to reasonable guidelines imposed by Declarant or adopted by the Board after consultation with the Owner of the affected Commercial Unit. The Association, Board and Residential Unit Owners shall not unreasonably restrict signage, window displays, lighting, horizontal sign extensions and window appliqués by a Commercial Unit or a Commercial Tenant. Notwithstanding the above, no Commercial Unit Owner or Commercial Tenant shall employ an advertising medium or signage which can be experienced from within a Residential Unit, including, without limitation, flashing lights, searchlights, blinking lights, loudspeakers, phonographs, radios or television. Before any signage and/or other advertising medium(s) may be erected, installed or employed by a Commercial Unit Owner or Commercial Tenant all permits and/or other approvals required by City and County of San Francisco agencies shall first be obtained. Notwithstanding the foregoing, the Association shall have the right to reasonably limit sidewalk advertising displays and "a-frame" sidewalk signs in order ensure that the sidewalks to not become clustered or interfere with access to the residential lobby and to ensure that sidewalk areas in front of the Development maintain a reasonably clean and organized appearance.

(c) **Lease of Commercial Units; Compliance of Lessees**. Any lease agreement shall be in writing and shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with the Governing Documents shall be a default under the terms of the lease agreement. All Commercial Unit Owners that lease a Commercial Unit shall provide the name(s) and contact information for their tenants to the Association. A Commercial Unit Owner shall be responsible for the compliance with the provisions of the Governing Documents by the Commercial Unit Owner's lessees, customers, guests and Invitees, as well as its lessee's customers, guests and Invitees. The Commercial Unit Owners and each of the Commercial Unit Owner's lessees shall maintain a policy or policies of appropriate coverage types in appropriate amounts including but not limited to general liability insurance as described in Section 9.10 and shall demonstrate proof of such insurance to the Board upon request.

(d) **Hazardous Materials**. The Commercial Unit Owners and its lessees shall not use or keep in any portion of a Commercial Unit, commercial storage area or the Common Area any kerosene, gasoline, solvents, cleaning materials, harmful chemicals, caustic materials or inflammable or combustible fluid or material or other hazardous materials, other than those required to operate the

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business for which the Unit is used or for normal cleaning work. Any such hazardous material(s) kept in a Commercial Unit or commercial storage area shall be stored and used in a safe manner and in strict compliance with product guidelines and in compliance with any applicable governmental rules or regulations.

(e) Venting for Restaurant Use. Any fuel, gas or other substances used in the operation of a restaurant or café for the preparation of food and beverages must be vented through a venting system approved by Declarant for so long as Declarant owns any Units in the Development, and thereafter by the Architectural Control Committee. Notwithstanding the foregoing, no venting through the roof of the building shall be allowed. All required governmental permits must be obtained for such venting.

(f) Grease Interceptors. Except as installed by Declarant, no Owner may install a grease interceptor within the Common Area. Subject to the Commercial Architectural Guidelines, a Commercial Unit Owner may install a grease interceptor within the interior of the Commercial Unit, provided that such Commercial Unit Owner has obtained the approval of Declarant so long as Declarant owns any Unit in the Development, and thereafter by the Architectural Control Committee. All required governmental permits must be obtained for such grease interceptor.

Section 7.3 Nuisance. No nuisance, use or practice is permitted which is detrimental to the health, safety and welfare of the residents or interferes with their peaceful possession or proper use of their Units. No use is allowed which creates conditions that are unreasonably hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise or which unreasonably increases the rates of insurance for the Development, causes an insurance policy to be canceled, causes a refusal to renew an insurance policy or impairs the structural integrity of any building. To the extent storage of materials is permitted pursuant to the Governing Documents, such storage must be in accordance with building, fire, health and safety requirements as set forth by governmental authorities and insurance carriers. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance or is unreasonable pursuant to this subsection, subject to the terms of this Declaration. Notwithstanding the foregoing, any commercial use or operation permitted under Section 7.2 and in compliance with applicable ordinances of the City and County of San Francisco shall not be considered a nuisance, noxious or offensive. Any provisions of this Section 7.3 that affect the rights of a Commercial Unit Owner or any commercial tenant shall not be amended without the prior written consent of any affected Commercial Unit Owner.

Section 7.4 Vehicle Parking and Operation Restrictions.

(a) No vehicle shall be parked, stored or operated within the Development, except as permitted by this Section 7.4, and with respect to the car stackers as defined in Section 7.4(i) below, in accordance with manufacturer guidelines. A Unit Owner or authorized occupant of a Unit which has been assigned a designated Exclusive Use Common Area parking area pursuant to Section 2.2(c) of this Declaration shall be permitted to park one (1) licensed passenger automobile, sports utility vehicle, motorcycle, scooter, truck with carrying capacity of ½ ton or less, or van with seating capacity of eight (8) persons or less within said parking space; provided, however, that motorcycle(s) or scooters and any other vehicle shall be permitted to be parked on a car stacker only if allowed pursuant to car stacker manufacturer guidelines. No vehicle shall be parked on a car stacker that exceeds the size and/or weight recommended by the manufacturer guidelines. No commercial vehicle, trailer, camper, mobile home, recreational vehicle, truck with carrying capacity of greater than ½ ton, van with seating capacity in excess of eight (8) persons, boats, inoperable vehicles or any vehicle too large or heavy to fit within a single parking space or car stacker shall be parked or kept within the Development.

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(b) Unit Owners shall use their Exclusive Use Common Area parking space(s) for no other purpose except parking of vehicles (or other permitted items described in this Section 7.4) as permitted under this Section 7.4. Parking spaces shall not be used for storage of any items. No vehicle shall be operated upon the Development which emits extraordinary and offensive levels of exhaust pollution or noise, as such levels may be determined by the Board. No Unit Owner shall allow oil, grease, antifreeze or any other fluid to leak from and remain in any portion of the garage or parking areas. Any Unit Owner who allows oil, grease, antifreeze or fluid to remain in any such areas shall be responsible for any expense incurred by the Association to remove such material and clean such area. The Association may establish Association Rules for the parking of vehicles within the Development.

(c) The Association may cause the removal of any vehicle or other item wrongfully parked within the Development or operating in violation of this Section 7.4, including a vehicle owned by a Unit Owner or occupant, to be towed and stored at the vehicle owner's expense and the Unit Owner or occupant responsible for the presence of such vehicle shall indemnify, defend and hold the Association, its Board Members, officers, managers and employees harmless for any damage to Persons or property which may result. Before removing any vehicle as provided herein, the Association shall comply with the requirements of Vehicle Code § 22658 in effect on the date of this Declaration or as amended. If said Vehicle Code section is amended, this provision automatically shall be amended in the same manner. The Association may install a sign at each vehicular entrance to the Development containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Development will be removed at the owner's expense. Such sign shall comply with the provisions of Vehicle Code § 22658.

(d) Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle or other item parked in a marked exit path, in a parking space designated for disabled persons without proper authority, or in a manner which interferes with any entrance to, or exit from, the Development or any parking space or Unit located thereon.

(e) In the event that a Unit Owner that is not handicapped or physically disabled (as defined by applicable laws) is assigned or granted an easement for the use of a designated accessible (handicap) parking space, the Board may reassign the accessible parking space to another Unit Owner who becomes permanently physically disabled or disabled for an extended period of time, or to a new Unit Owner or Occupant of a Unit who is physically disabled. The Board shall have the authority to reassign and cause the transfer of parking spaces in a reasonable manner as the Board deems necessary to provide any Unit Owner or Occupant of a Unit, including a Commercial Unit Owner, with a designated accessible parking space, if said Unit Owner or occupant is legally entitled to the use of a designated accessible parking space. In the event that the Board determines to transfer a parking space as provided in this subsection, the Board shall have the authority to execute and record any documents necessary to facilitate and memorialize such a reassignment and transfer. In the event that the Board determines to transfer a parking space as provided in this subsection, the Board shall implement a lottery system and drawing to determine which parking space(s) will be subject to reassignment and transfer as described in this subsection. Both the transferor Unit Owner(s) and transferee Unit Owner(s) of the parking space(s) shall execute and record any easement, deed or other document required, as determined by the Board, to facilitate and finalize such a reassignment and transfer. All costs for such a transfer shall be borne by the transferee receiving such an accessible parking space. Accessible parking space(s) designated for use by a Commercial Unit, if any, shall not be subject to reassignment and transfer as described in this Section 7.4(e).

(f) The Association shall have the right to temporarily relocate any Unit Owner's parking space(s) without compensation during cleaning, painting, construction activities, or other maintenance or repair work within the garage area.

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(g) Use of any car share parking spaces in the Development, if any, shall be subject to the Rules of the Association.

(h) Installation and use of any electric vehicle charging stations in the Development, if any, shall be subject to the Rules of the Association.

(i) **Parking Lifts ("Car Stackers").** The majority of parking spaces in the Development are located on parking lifts or "car stackers" that use machinery to park vehicles in vertical and/or rotating stacks. Each parking lift provides parking for two or more permitted vehicles. The parking lift machines are part of the Common Area. Certain Owners shall be granted an easement providing for the exclusive right to park a permitted vehicle on a designated space on one of the parking lifts. Due to the movement of the individual platforms within a parking lift, an Owner's designated parking platform may not be in the same position within the parking lift at all times. An Owner that has been granted an easement to park on a parking lift will share that parking lift with the other Owner(s) that have been granted an easement for the right to park on that parking lift. The parking lift areas and related equipment shall be used in accordance with manufacturer guidelines and in accordance with any applicable Association Rules that may be promulgated by the Board. Reference is made to Section 4.8 of this Declaration for further detail concerning costs and maintenance related to the parking area.

Those Owners granted an easement for use of a parking space on a parking lift shall be solely responsible for learning to operate the parking lift and for testing the parking lift prior to the close of escrow for the purchase of their Unit, and shall determine that the parking lift is in good working order and shall acknowledge that such testing has taken place and that the parking lift is found to be in satisfactory condition.

Any Owner whose parking space is located on a car stacker shall disclose all relevant information to any tenant or other occupant of such Owner's Unit concerning access to and use of the parking space and applicable restrictions, and shall provide any such tenant or occupant with a copy of the car stacker manufacturers guidelines as well as any restrictions or Rules adopted by the Association. Such Owner shall instruct its tenant(s) and other occupants on how to properly use the car stacker. Such Owner shall be responsible for compliance with all applicable Rules, restrictions and manufacturer guidelines by such Owner's tenant(s) and other occupants of such Owner's Unit with respect to use of the car stacker.

No vehicle may be parked on a parking lift if the parking lift is not designed to accept the height, width, length, size and weight of such vehicle, as determined by manufacturer guidelines. Each Owner assigned the right to use a parking lift shall comply with all rules and operating instructions issued by the manufacturer, a copy of which shall be maintained by the Association. Those Owners assigned a parking space on a parking lift shall cooperate with one another concerning shared use of the lift. The parking lifts shall be used only in accordance with this Section 7.4 and other applicable terms of this Declaration and any applicable Association Rules that may be promulgated by the Board.

(j) Use of car stackers shall be at the user's own risk. Any (i) injury to any person or pet, (ii) damage to any vehicle or personal property, or (iii) damage to a car stacker, caused by, arising from or related to the use of any car stacker by an Owner, tenant, family member, Occupant or any other user of a car stacker, shall be the sole responsibility of such Owner, tenant, family member, Occupant or any other user that Owner. Declarant and the Association shall have no responsibility for any such injury or damage caused by, arising from or related to the use of any car stacker in the Development.

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Section 7.5 Animals.

(a) No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Unit or elsewhere within the Development, except that domesticated dogs, domesticated cats, birds kept in bird cages, fish kept within an aquarium, or other animals as described in the Association Rules, may be kept as household pets within any Unit if such animal(s) are not kept, bred or raised for commercial purposes. With the exception of fish, there shall be no more than a total of two (2) pets kept in any Unit. In no event shall any fighting breed, including, but not limited to, Pit Bull Terrier, Staffordshire Bull Terrier, American Staffordshire Terrier, Rottweiler, American Bull Dog, Tosa Inus, Doberman Pinscher, Presa Canario, Chow, Fila Brasileiro, Argentine Dogo, Akita, Mastiff, Alaskan Malamute, or Wolf hybrid, and all mixes of these breeds, be kept in any Unit or elsewhere in the Development, except as otherwise required by law. There shall be no limitation on "disability assistance" dogs or other registered service dogs as certified by the applicable government authority for assistance of visually impaired persons. No fish tank or aquarium with greater than thirty (30) gallons of water shall be permitted. The keeping and control of each type of pet shall be expressly subject to such controls or prohibitions as may be reasonably adopted by the Board from time to time. No pet may be kept on the Development if the Board, after a hearing, determines, in its sole good faith judgment, that it would result, would continue to result or has resulted in substantial noise or other annoyance or that it would be, would continue to be or has been obnoxious, menacing or threatening to a person of ordinary sensibilities living within a Unit in the Development. Any decision regarding the conduct of a pet shall be made only after notice to the Unit Owner and the opportunity to be heard before the Board, unless the Board determines it is an emergency.

(b) No pets shall be allowed in the Common Area except as may be permitted by the rules of the Association. All pets must be leashed in the Common Area. No dog whose barking unreasonably disturbs other Unit Owners shall be permitted to remain on the Development. Unit Owners shall prevent their pet from soiling any portion of the Common Area and shall promptly clean up any fouling by their pet. The Association, Declarant or any Unit Owner may cause any unauthorized pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City and County of San Francisco, by calling the appropriate authorities, whereupon the pet's Unit Owner (upon payment of all expenses connected therewith) may repossess the pet. Each person bringing or keeping a pet upon the Development shall be liable to the other Unit Owners, their family members, guests, invitees, tenants and contract purchasers and their respective family members, for any damage to Persons or property proximately caused by any pet brought upon or kept upon the Development by such person bringing or keeping a pet upon the Development. Notwithstanding anything contained herein, each Unit Owner with a pet in its Unit shall comply with each applicable ordinance of the City and County of San Francisco. Animals may only be fed within the confines of a Unit Owner's Unit; feeding of animals within the Common Area or otherwise outside a Unit Owner's Unit is prohibited.

Section 7.6 Garbage and Refuse Disposal. All rubbish, recycling, trash, garbage and compost shall be regularly removed from the Development and shall not be allowed to accumulate thereon. Trash, garbage, recycling, compost and other waste shall, at all times, be kept in designated sanitary containers. Trash, garbage, recycling, compost and other waste shall not be left outside a Unit Owner's Unit in a hallway or other Common Area. All trash, garbage, recycling, compost and other waste shall be placed in the trash chutes or other available proper trash receptacle. All equipment for the storage or disposal of such waste material shall be kept in a clean, orderly and sanitary condition. To the extent reasonable, all equipment, trash, garbage, recycling, compost and other waste containers shall be kept in enclosed areas. Any large boxes and moving materials and other packing from a Unit must be broken down by the Owner or Occupant of that Unit, and placed into the appropriate trash or recycling container.

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No oversize or bulky items whatsoever shall be placed in any trash chute that may cause the trash chute to become damaged, backed-up or clogged. If the Development includes a trash chute sorting system whereby trash, recycling and compost is to be sorted any placed in a designated chute or receptacle, then each Occupant shall be required to use such sorting equipment in the designated manner. Use of the trash chutes and other trash facilities shall be subject to Association Rules, including penalties that may be assessed against a Unit Owner for violation of such Rules.

Section 7.7 Rental Restrictions.

(a) No Owner shall be permitted to lease that Owner's Unit for transient or hotel purposes which shall be defined as (i) rental for any initial period of less than one (1) year, or (ii) any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid services or the furnishing of laundry and linen subject to a fee, or (iii) any rental if the occupants or temporary users are renting the Unit, or room or other space therein as a short-term accommodation or lodging for an initial period of less than one (1) year. Subject to the foregoing restriction, the Owner of the Unit shall have the right to lease that Owner's Unit provided that the lease is for the entire Unit (the taking in of a roommate by an Owner shall not be a violation of this clause), is in writing and is expressly made subject to the Governing Documents and further provided that the breach by the tenant of such covenants, conditions, restrictions, limitations, uses or rules shall also be a breach of the lease.

(b) Notwithstanding the foregoing, the rental and leasing restrictions in Sections 7.7(a) and (b) above shall not apply to a Mortgagee in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding or any other deed or other arrangement in lieu of foreclosure; provided, however, that all Owners and Mortgagees shall be required to follow the rules in Section 7.7(c) below in connection with any rental or leasing of a Unit in the Development.

(c) In the event an Owner does lease that Owner's Unit as herein provided, that Owner shall, within three (3) days of execution of the lease, provide the Board or the property manager with the following:

(1) Name and contact information of each permitted occupant.

(2) Current address, telephone number and email of the Owner.

(3) A statement by the Owner that the tenant has received a copy of the Declaration and any amendment thereto, the Articles, the Bylaws, the Association Rules, any parking rules, any rules and regulations of the Architectural Control Committee, and that such tenant has been advised of any obligation that tenant may have thereunder. Such statement shall include notice to the tenant of the Association's and Declarant's right of entry into the Unit after forty-eight (48) hours notice or in the event of an emergency.

(4) A statement by the Owner that the lease does not relieve the Owner of that Owner's obligation to pay each and every Assessment to the Association.

(5) The duration of the lease.

(6) If requested by the Association or property manager, an acknowledgment by the Owners and tenant of any particular Association Rules concerning leasing in the Development.

(7) A copy of the lease, if requested by Declarant or the Association.

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(8) In the event that any tenant's lease is renewed, the Owner shall notify the Board or the property manager if there are changes to any of the information described in this Section 7.7(c) above.

Section 7.8 Radio and Television Antennas; Satellite Dishes; External Lines, Wiring or Equipment.

(a) No television, video or radio pole, antennae, satellite dish, cable or other transmission and/or reception equipment, other similar external fixtures (collectively "Antenna Equipment"), other than that originally installed by Declarant or approved by the Architectural Control Committee and any replacements thereof, shall be installed, constructed or maintained on or within the Development:

(i) on or within any property which is not within the exclusive use or control of the Unit Owner where the Owner, as provided in 47 C.F.R. § 1.4000 and any other applicable laws, rules and decisions related thereto (collectively, "Antenna Laws") or restrictions;

(ii) in any location in the Development if, in the opinion of the Board, such location would be unsafe, or compromise any exterior surface of any building or roof area such that moisture may intrude into the building; or

(iii) that is of a size greater than permitted by the Antenna Laws.

(b) Before any Antenna Equipment may be installed in the Development, written notice of such installation shall be provided to the Association. Any construction, installation or maintenance of any Antenna Equipment that is greater than one meter or less in length or diagonal measurement and/or not in strict compliance with subsections (i)-(iii) above, shall be permitted only with the prior written approval by Declarant or the Architectural Control Committee. The Declarant or Association may impose reasonable restrictions and architectural guidelines for the construction, installation and maintenance of any Antenna Equipment, so long as such restrictions and guidelines are not inconsistent with the Antenna Laws. Such restrictions and guidelines may include, without limitation, location, color, screening, methods of construction and installation, qualifications and insurance requirements for installers or contractors, and indemnification of the Association and its Members related to such construction and installation.

(c) Under no circumstances shall any Antenna Equipment be constructed, installed or maintain on or within the Common Area, including, without limitation, any Common Area roof area or exterior wall, without the prior written approval of Declarant or the Architectural Control Committee.

(d) In the event that any common central radio and/or television antenna system, cable television system, satellite dish or other central television reception system (collectively, "Common Antenna") is installed by Declarant or the Association and designated for shared use by the Unit Owners, an Owner may be required to use such Common Antenna in lieu of any private Antenna Equipment. In such circumstances, an Owner may, with prior written approval by the Declarant or Board, connect to such Common Antenna. Before any Owner may connect to any such Common Antenna, such Owner must submit an application to Declarant or the Board, and the Declarant or the Board shall have the right to impose reasonable conditions on any connection to and use of such Common Antenna. Each Owner shall be responsible to set up and pay for its own individual account with the service provider, at no cost to the Association.

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(e) Declarant or the Association may, but are not obligated to, provide a limited and defined area on a roof of a Condominium Building that may be used by the Owners for the purposes of installation of Antenna Equipment; provided, however, that any such installation shall be strictly subject to rules and regulations imposed by Declarant or the Board. In such circumstances, an Owner may be required to use such defined area rather than any other roof area for installation of Antenna Equipment. Before any Owner may use any such area, such Owner must submit an application to Declarant or the Board, and Declarant or the Board shall have the right to impose conditions on the use of such area.

(f) In order to prevent any water intrusion or leakage into the roof or walls of any building in the Development due to the creation of holes or punctures in connection with the installation of any Antenna Equipment, there shall be absolutely no drilling, holes or other punctures in any portion of the exterior of any building in the Development including, without limitation, any exterior walls, terraces, balconies, floors, ceilings or roof areas or exterior system, without the prior written approval of Declarant, Board or Architectural Control Committee. Any such actions by an Owner or Occupant of a Unit, without the prior written approval of Declarant, Board or Architectural Control Committee, shall void any applicable warranties provided to a Unit Owner by Declarant related to finishing, water intrusion or leakage caused by, arising from or related to such actions.

(g) No Antennae Equipment shall be constructed or installed in any portion of the Development without first obtaining all required governmental permits.

(h) Nothing herein this Section 7.8 shall be construed to (i) restrict or limit in any manner Declarant's right to install any Antenna Equipment or any other similar improvements on any portion of the Property in connection with the development and construction of the Development or any portion thereof, or (ii) restrict Declarant's or the Board's right to authorize any cable, telecommunication, television or radio franchisee or other provider of similar services to provide cable television, internet, satellite dish, telecommunication, radio or other similar services to the Development.

Section 7.9 **Power Equipment; Car Maintenance; Hazardous Materials.** No power equipment, hobby shops or car maintenance, car washing, other than emergency work, shall be permitted in the Development. Unit Owners shall not use or keep on the Development any gas, solvent, kerosene, paint, caustic material, harmful chemicals, inflammable substance or other combustible substance, or other hazardous material. All cleaning materials or other potentially harmful or hazardous materials shall be stored and used in a safe manner and in strict compliance with product guidelines and in compliance with any applicable governmental rules or regulations. No tank for the storage of gas, liquid, explosive or any flammable substance shall be stored on or in the Development unless such installation is done by Declarant, except that a typical propane tank for a barbeque grill may be kept in the Development if approved by Board, subject to the Association Rules. Parking area(s) shall not be used for vehicle maintenance or repair, except in the limited case of a short term emergency repair to allow the vehicle to start and run so that the vehicle may be transported to a repair facility.

Section 7.10 **Liability of Unit Owners for Damage.** The Owner of each Unit shall be liable to the Association for all damages to the Common Area caused by such Unit Owner or any guest, Occupant or Invitee of such Owner's Unit or the pet of any such party.

Section 7.11 **Storage.** Nothing shall be stored in the Common Area, in any Exclusive Use Common Area, or on any terrace or balcony (except for storage areas designated for storage purposes) without the prior written consent of the Board. Terraces and balconies shall not be used for storage of bicycles, BBQs or any other items. No perishable items, combustible substance or other hazardous material whatsoever shall be stored in any storage area, provided that typical products used in connection with a permitted use of a Commercial Unit shall be permitted, so long as any such products are stored

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according to applicable product guidelines and prudent business practices. Each Unit Owner is solely responsible for any loss, damage or theft of any items stored in any storage areas or other portion of the Development by an Owner or Occupant of an Owner's Unit.

Section 7.12 **Declarant's Sales and Leasing Activities.** Declarant and Declarant's successors and assigns may use any portion of the Common Area and/or one (1) or more of the various Units owned by Declarant from time to time as a sales model, design center or display and sales or leasing office, and may maintain reasonable displays and conduct reasonable activities related to sales and customer service therein, until such time as the last Unit is sold or leased.

Section 7.13 **Signs.** No commercial sign of any kind shall be displayed to the public view on or from any Residential Unit or the Common Area without the prior written consent of the Board subject to the following exceptions:

(a) Development identification signs or informational signs approved by the Board;

(b) Signs advertising any Condominium for sale or exchange of a reasonable design and size and in a reasonable location as previously approved in writing by the Board;

(c) Signs maintained by Declarant in connection with its sales and marketing activities for the Development. Notwithstanding anything contained herein, any sign which is displayed shall conform to each applicable City ordinance and regulation regarding signs; and

(d) Noncommercial signs may be restricted by the Board as provided in Civil Code Section 4710.

Subject to the provisions of Section 11.4 of this Declaration, no sign of any type or purpose with dimensions greater than twelve inches (12") in height by twenty-four inches (24") in width shall be displayed on or from any Residential Unit, except for signs maintained by Declarant in connection with sales or leasing activities, which shall not be subject to any restrictions on signage or related advertising. Subject to the provisions of Section 11.4 of this Declaration, no more than one (1) permitted sign shall be displayed from any Unit at any given time.

Section 7.14 **Spas and Hot Tubs.** In no event shall any spa, hot tub or whirlpool bath be permitted in any Unit, or in any balcony or terrace area.

Section 7.15 **Combination of Residential Units.** Contiguous Residential Units may be combined for use as a single residence with the Board's approval or Declarant's approval, prior to election of the Board. A Unit Owner with contiguous Residential Units shall have an easement over the Common Area and demising walls between that Unit Owner's Units in order to perform a combination of that Unit Owner's Units, subject to the terms of this Section 7.15. Before the Board shall consent to any such combination (except for combinations accomplished by Declarant prior to the conveyance of all Units which shall not require Board approval), it shall first receive and give its approval of:

(a) Architectural plans;

(b) A certificate of a structural engineer licensed in the State of California and approved by the Board stating that those portions of the Common Area affected by the proposed combination are not required for structural support;

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(c) A bid by a contractor licensed in the State of California and approved by the Board setting forth the cost to make the proposed combination and the time within which the combination could be completed;

(d) A bond naming the Board as an obligee (or other security approved by the Board) to assure the prompt completion of the combination in a workmanlike manner free of mechanics liens;

(e) All building and other governmental permits required for the construction;

(f) A certificate of an electrician and/or plumber, as applicable, licensed in the State of California setting forth in detail the effect the proposed combination would have on any plumbing and wiring within the Common Area to be affected by the proposed combination; and

(g) Any other reasonable requirement of the Board.

The Unit Owner of such combined Residential Units shall be entitled to the votes and shall be obligated to pay the Assessments on each of the owned Units in the same manner as if they had not been combined. The Unit Owner of such Units to be combined shall have an easement over the Common Area boundary walls and bearing walls for the purpose of causing such Units to be combined.

The Board shall permit reconstruction of such Residential Units as independent Units in conformance with the Condominium Plan upon the Board's receipt and approval of items (a) through (g) above relating to such reconstruction. No Unit shall be independently conveyed, leased or transferred as an independent Unit unless and until such reconstruction has been accomplished

In order to prevent any water intrusion or leakage into the roof or walls of any building in the Development due to the creation of holes or punctures in connection with the combination of any Units, there shall be absolutely no drilling, holes or other punctures in any portion of the exterior of any building in the Development including, without limitation, any exterior walls, floors, ceilings, roof areas or any exterior system, without the prior written approval of the Board, or Declarant prior to election of the Board.

Any construction work in connection with the combination or separation of Units described in this Section 7.15 shall be subject to, and performed pursuant to, valid permits and approvals from the San Francisco Planning Department and Department of Building Inspection.

Section 7.16 **Water Beds.** No water beds shall be used or installed in any Unit.

Section 7.17 **Floor Coverings.** No change in the type of floor covering materials as were originally installed in the Units shall be permitted except with the written consent of the Architectural Control Committee. To reduce sound transmission, all Units above other Units shall have seventy-five percent (75%) of all floor areas except kitchens and bathrooms covered with carpet, rugs or other material approved by the Architectural Control Committee that provides equivalent insulation against sound transmission to the Unit below. Each installation of carpeting shall include carpet padding or carpet cushion which meets or exceeds the specifications for Class 1 padding (Heavy Traffic, Residential or Commercial). All rugs shall be of sufficient thickness and/or shall include padding to provide adequate insulation against sound transmission to the Unit below. The installation of any type of hard surface flooring in a Unit shall include sound dampening and/or insulating materials in order to reduce sound transmission, as approved by the Architectural Control Committee. If any change is proposed to any floor covering in a Unit, the Architectural Control Committee shall require that the replacement covering provide the same or better acoustical characteristics as the floor covering that is being replaced, including,

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without limitation, designed to reduce sounds transmission. Without limiting the generality of the foregoing, any proposal to install any hardwood flooring in any bedroom shall in particular be subject to approval by the Architectural Control Committee, and shall include acoustic underlayment and sound dampening and/or insulating materials in order to reduce sound transmission. Notwithstanding the foregoing, any installation of any flooring, hardwood flooring or carpeting by Declarant or by any upgrades provider approved by Declarant, or any change to any previously installed flooring, hardwood flooring or carpeting by Declarant or by any upgrades provider approved by Declarant, shall not require the permission or approval of the Architectural Control Committee or Board.

Section 7.18 Conduct Affecting Insurance. Nothing shall be done or kept in any Unit or in the Common Area or Exclusive Use Common Area which will unreasonably increase the rate of insurance on the Common Area without the prior written consent of a majority of the Unit Owners. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or on any part of the Common Area or which would be in violation of any law. No waste shall be permitted in the Common Area.

Section 7.19 Common Utilities. No change in the utility requirements of a Unit may be accomplished by an Owner without the prior approval of the Board if such utility is metered on a meter shared by other Units or the Common Area. Except for work by Declarant, no major power tools or other power-consuming devices shall be operated in the garage, parking areas or other portions of the Common Area without prior approval of the Board.

Section 7.20 Roof. Subject to the provisions of Section 6.3 of this Declaration, no person except Declarant or a person authorized thereby, and except maintenance personnel authorized by the Board or Association manager, shall walk on any roof area without the prior consent of the Board or Association manager, except for any roof terrace or other area(s) constructed for such use by the Occupants.

Section 7.21 Owner Responsibility for Guests, Lessees, Occupants, Invitees. Each Owner shall be responsible for compliance with the provisions of this Declaration and the Governing Documents and any Association Rules by his guests, co-inhabitants, lessees, tenants, Occupants and other Invitees (including, without limitation, employees, customers, guests and Invitees of any such party).

Section 7.22 Compliance with Laws. No Unit Owner shall permit anything to be done or kept in his Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

Section 7.23 Damage to Common Area and Personal Injuries. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, Tenants, Occupant, guests, co-inhabitants, or Invitees to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of the deed for his or her Unit, agrees for himself or herself and for the members of his or her family, contract purchasers, co-inhabitants, tenants, Occupants, guests or Invitees to indemnify each and every other Owner and to hold such Owner harmless from, and to defend such Owner against, any claim by any Person for personal injury or property damage occurring (a) within the Unit or appurtenant Exclusive Use Common Area of that particular Owner, and (b) within any exclusive easements over the Common Area appurtenant to that Owner's Unit or appurtenant Exclusive Use Common Area, unless the injury or damage occurred by reason of the negligence of another Owner temporarily visiting in said Unit or portion of the Common Area subject to an exclusive easement appurtenant to the Unit or is fully covered by insurance.

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Section 7.24 **Noise Abatement.** All audio visual and/or entertainment systems, vacuum cleaners, kitchen exhaust fans, tools, exercise equipment or similar noise producing products located in a Unit Owner's Unit shall be operated in such a manner that they cannot be unreasonably heard in any bedroom of any other Unit in the Development during the hours of 11 p.m. to 7 a.m. Each Unit Owner and occupant of a Unit shall comply with any Rules of the Association with respect to noise and shall cause no noise which unreasonably disrupts another Unit Owner or occupant's use of their Unit.

Section 7.25 **Use of Common Roof Terraces; Lobby; Private Terraces, Balconies.** No activities shall occur on any Common Area roof terrace, lobby area or other such area shared by all Unit Owners, or on any Exclusive Use Common Area terrace or balcony, that will cause an unreasonable disturbance to Unit Owners or Occupants of other Units. There shall be no use of barbeques or other outdoor cooking on any Exclusive Use Common Area terraces or balconies appurtenant to any Units. The use of the Common Area roof terraces, including use of any amenities and improvements, if any, shall be in accordance with the Association Rules. Each Unit Owner shall, at all times, keep that Unit Owner's terrace or balcony free and clear from debris and maintain it in a neat, clean, attractive, safe and first-class manner. No Unit Owner shall leave any personal items on any Common Area roof terrace, lobby area or other such area shared by all Unit Owners when that Unit Owner is not present. In recognition that terraces and balconies, as applicable, may have open decking to allow for proper drainage, or may be situated such that runoff from said area may drain onto the Common Area, a Unit Owner shall not be responsible to any other Unit Owner or the Association for the unintentional spillage of water or other inoffensive or non-harmful material from that Unit Owner's terrace or balcony through such open decking or drainage; provided, however, that a Unit Owner shall not allow excessive amounts of water to pool or collect upon, spill or drain from that Unit Owner's terrace or balcony. Unit Owner's shall keep water collection basins underneath all planters and garden pots located in terraces or balconies in order to prevent water from leaking from such planter or garden pots onto or from the surface of the terrace or balcony. Terraces and balconies shall not be used for storage of bicycles, BBQs or any other items. Terraces and balconies shall not be used for the drying of clothes. No clotheslines shall be permitted on any terrace or balcony. If any items are placed or stored on any Exclusive Use Common Area terrace or balcony that are deemed unsightly or in disrepair by the Board is its reasonable discretion, then the Board may require that such items be removed by such Owner or Occupant. The Board may adopt Association Rules concerning storage of items on Exclusive Use Common Area terraces or balconies. The flooring of balconies or terraces shall not be punctured in any way.

Use of any Common Area lobby area, common roof terrace or other shared area and any amenities, improvements or equipment thereon by Unit Owners, Occupants or Invitees shall be subject to and in strict accordance with the Association Rules. The Association shall be permitted to install and use a barbeque or outdoor cooking equipment and related equipment and improvements on the Common Area roof terrace areas. Use of any barbeque or outdoor cooking equipment, furniture, sinks, countertops or related equipment located on any Common Area roof terrace or other shared area, if any, shall be used in strict accordance with the Association Rules. Such Rules may include, without limitation, restrictions on hours of use, noise, types of activities, fees for use and/or clean-up, penalties for violation of applicable rules, reservation and clean-up requirements, and other such restrictions as may be promulgated by the Board.

The flooring, ceiling and walls of any terrace or balcony shall not be punctured in any way. Nothing shall be attached or otherwise connected to the flooring, ceiling or walls of any terrace or balcony in such a manner as that causes the flooring, ceiling or walls of the terrace or balcony to be pierced or punctured.

Nothing shall be placed, kept or stored on any Exclusive Use Common Area terrace or balcony or any railing that may be at risk of flying off or falling from the terrace, balcony or railing. Owners and

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Occupants are advised that high winds or other natural occurrences may cause items to fly or fall off a Exclusive Use Common Area terrace, balcony or railing, and Owners and Occupants shall take precautions to avoid any items from flying or falling off a Exclusive Use Common Area terrace, balcony or railing onto any portion of the Property or public property adjacent to the Development. Even small items falling from a terrace, balcony or railing may cause severe injury to persons and/or property below.

Section 7.26 Window Coverings. Curtains, drapes, blinds, shutters or other window coverings visible from the street or Common Area shall be restricted to a white, off-white, neutral light grey or neutral light tan color, unless expressly approved by the Board or the Architectural Control Committee. Windows shall not be covered with newspaper, aluminum foil, blankets, sheets, cardboard or other materials not designed for covering windows. Temporary paper shades are limited to a maximum of thirty (30) days after close of escrow.

Section 7.27 Architectural Control. In order to promote a harmonious and cohesive physical environment within the Development, and to prevent additions, alterations, or replacements which may adversely affect property values throughout the Development, the Board is empowered to promulgate and enforce architectural controls, guidelines, rules and restrictions as described herein this Section. The ultimate responsibility shall remain with the Board, but the Board may delegate its authority to an Architectural Control Committee (the "Committee") as provided herein and in Article XI of the Bylaws. The members of the Committee shall be appointed as described in Article XI of the Bylaws. The Board or the Committee shall establish reasonable, objective standards clearly ascertainable to the Owners, and shall not act arbitrarily or capriciously in the process of reviewing plans. Such standards may include construction guidelines, rules and regulations, including, without limitation, insurance, permitted hours of construction, scheduling of construction activities, procedures for access to a Condominium Building, use of elevators, storage of materials, clean up, control of dust and debris, noise controls, and other typical construction guidelines. The emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Development, as well as the integrity of acoustical, utilities, structural and waterproofing systems of a Condominium Building. The Board and the Committee shall base their decisions on what is in the best interests of the Development as a whole, and not upon what will appease a particular Member or group of Members. Both the Board and the Committee shall operate pursuant to the following guidelines:

(a) No construction, installation, addition, improvement, repair, wiring, exterior painting, replacement, alteration or removal of any part of the Development or any building structure, including flooring, interior and exterior walls, or any portion of a Unit that can be seen from the Common Area or any other Unit, or replacement or modification of any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling which might in any way increase the sound transmission, resonance or reverberation from one Unit to another, shall be commenced, installed, erected, painted, repainted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board or by the Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may decorate, paint or repaint the interior usable space of the Owner's Unit, provided such decorating does not affect, modify, alter or impair the structural, mechanical or acoustical integrity of any portion of the Common Area or Condominium Building, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including roofs, windows or bearing walls), and does not involve flooring of the Unit or the window covering of the Unit; provided, however, that any improvement or modification to or alteration of any of the following areas, improvements or components located within the boundaries of a Unit as defined in Section 2.2(a) shall be subject to review and approval by the Architectural Control Committee: (A) any fire rated wall or other building component, (B) any wall, window, ceiling or floor located at the boundary between the Unit and the Common Area, (C) any structural component or infrastructure of the Condominium Building, or (D)

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any building system or utility system that serves any other Unit or the Common Area. In any event, the fire rating of any wall or other building component must be maintained.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the Board or Architectural Control Committee for approval as to quality of workmanship and design and harmony with existing improvements, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with the original plans and specifications or plans and specifications previously approved by the Board or by the Committee. Nothing contained in this Section shall be construed to limit the right of an Owner to paint or remodel the interior of that Owner's Unit.

(c) No landscaping or other physical improvements or additions shall be made to any terraces or balconies that are visible from the street or Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or the Architectural Control Committee.

(d) Any decision of the Committee to permit improvements, modifications or alterations shall not be unreasonable, arbitrary or capricious and shall not violate any governing provision of law. If such decision disapproves the proposed change or changes, it shall include both an explanation of the reason for disapproval and a description of the reconsideration procedures of the Committee. Reconsideration of any such disapproval shall occur at an open meeting of the Committee conducted in accordance with the Bylaws, and the Committee's written decision thereon shall be issued within the time frames specified in the Architectural Guidelines. The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Condominium as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when then proposed work will result in improvements that can be seen from any other Condominium, the Common Area, or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously. The Committee may impose terms and conditions on any approval, including: contractor licensing requirements; insurance requirements; completion and labor and materials bonds or other acceptable collateral; and construction regulations such as authorized hours of construction, access restrictions, noise restrictions, and clean-up requirements. Any member of the Committee or any authorized agent of the Committee from time to time and anytime during normal business hours may enter any Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee.

(e) Approval of plans or specifications by the Board or the Committee shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and its members, harmless from any and all liability arising out of such approval.

(f) Before commencement of any alteration or improvements to a Unit or Exclusive Use Common Area the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

(g) All work approved by the Board or the Committee shall be completed in compliance with the approvals granted, and shall be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is

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not commenced within six months after the approval date, or such later time as the Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

(h) The Board or the Committee or its authorized agent or representative shall have the right to inspect work within sixty (60) days after a notice of completion has been delivered to the Board or the Committee by the Owner. If after such inspection the Board or Committee determines an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural review functions under this Section 7.26, the Committee shall notify the Board, and the Board shall provide notice and a hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural review functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Development, or to remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board in its discretion may grant, the Board may (i) cause the non-complying improvement to be removed, (ii) remedy the non-compliance, or (iii) institute legal proceedings to enforce compliance or completion.

(i) The Committee or the Board may condition its approval upon the Owner recording a "Notice of Non-Responsibility" or similar document protecting the Association or other Owners from any mechanics lien that may be recorded because of such alteration or improvement.

(j) Nothing contained in this Section 7.26 shall be construed as requiring Declarant to obtain any approval for the construction, installation, completion or renovation of the Development or any improvements thereon. In addition, Declarant, or its successor or assign shall not be subject to the review or approval requirements of this Section 7.26 in connection with any repairs or modifications made to any improvements as may be required by law or pursuant to an agreement with any Unit Owner or the Association.

(k) Notwithstanding any provision herein to the contrary, in no event shall any Owner or occupant puncture or cause any holes or opening in any terrace or balcony surface or wall without the express written consent of the Board or Committee. If approved, any such hole or opening in a terrace or balcony surface or wall shall be specifically designed to prevent any leakage, seepage or intrusion of water or moisture of any kind into the building.

(l) In reviewing plans, the Architectural Control Committee shall comply with the requirements of Civil Code Section 4765, and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between the provisions of this Section 7.26 and Civil Code Section 4765, Civil Code Section 4765 shall control to the extent of the conflict.

(m) The Board or Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. Failure of the applicant to make all payments required hereunder shall relieve the Committee from the time constraints of this section until such payments are made.

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(n) **Architectural Review of Alterations, Modifications and Improvements by Commercial Unit Owners**. Given the need for Commercial Unit Owners to be able to operate the Commercial Units in a manner deemed necessary by the Commercial Unit Owners, the architectural review and approval process for the Commercial Units is different than that for the Residential Units.

(1) The Commercial Unit Owners shall not commence any alteration, improvement, construction, remodeling or reconstruction which will affect the structural support elements of the Development, common utility facilities or the Common Area commercial storefront portions of the Development ("Commercial Work") unless plans and specifications for such work have been approved in writing by the Declarant, so long as Declarant owns any portion of the Development, and thereafter by the Architectural Control Committee. Such reviewing party shall have the right to impose commercially reasonable conditions on such Commercial Work, but may not disapprove such Commercial Work. Notwithstanding anything to the contrary set forth in this Declaration, so long as Declarant owns a Commercial Unit, Declarant shall have the sole right to review and approve plans and specifications relating to the installation of any Commercial Work and other improvements within the Commercial Units, including without limitation, the initial construction and build-out of all improvements within the Commercial Units.

(2) Except as specifically provided in this subsection 7.26(n), Section 7.26 shall not apply to construction, renovation, alteration or other improvement work within the Commercial Units, and the consent or approval of the Association, Board or the Architectural Control Committee shall not be required for a Commercial Unit Owner to perform construction, renovation, alteration or other improvement work within the Commercial Unit. Notwithstanding the foregoing, in the event that Declarant or the Architectural Control Committee has the limited right to review and approve plans as described in this Section 7.26(n), then the timeframes for submittal, review and approval of plans and construction work described in this Section 7.26 shall apply.

(o) **Architectural Control Committee**. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the sale of the first condominium in the Development pursuant to a Public Report for the Development. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Development have been sold pursuant to a Public Report, or until the fifth anniversary of the sale of the first condominium in the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. In the event of death or resignation of any Committee member, said member's replacement shall be appointed by whomever (the Board or Declarant) appointed that member. A majority of the members of the Committee may appoint a single member to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant thereto.

Section 7.28 Concrete Slabs. Concrete slabs for the Development may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to extremely high tension ("Post Tension Slab"). Cutting into any Post Tension Slab in any building within the Development for any reason may be very hazardous and may result in serious damage to the Units or building and may cause personal injury. No Unit Owner shall cut into or otherwise tamper with any Post Tension Slab or any other slab, or permit or allow any other Person to cut into or otherwise tamper with any Post Tension Slab or other slab. Each Unit Owner shall disclose to any Person who rents, leases or purchases the Unit from the Unit Owner the existence of the Post Tension Slab and these limitations on cutting into or otherwise tampering with the Post Tension Slab or other slab. The Unit Owner shall indemnify and hold harmless Declarant, the Association and their officers, employees, contractors and agents from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any

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breach of this covenant by such Unit Owner or the tenants or renters of, or purchasers from such Unit Owner. No drilling or cutting whatsoever into the Post Tension Slab or any other slab shall be permitted without the prior written approval of the Board, and any cutting or drilling into the Post Tension Slab or other slab shall require the review, approval and oversight of a structural engineer or similar licensed professional.

Section 7.29 **Legal Action.** The failure of any Unit Owner to comply with any provision of this Declaration, the Bylaws or the Association Rules, if any, shall give rise to a cause of action in the Association and/or any aggrieved Unit Owner for the recovery of damages or for injunctive relief, or both, including reasonable attorneys fees, costs and expenses as may be determined by the court.

Section 7.30 **Smoking Prohibited in Shared Common Areas.** In order to engender a healthy and environmentally friendly atmosphere, and to reduce second-hand smoke that may be experienced by the occupants of the Development, there shall be no smoking of any kind, including electronic and/or vapor cigarettes, in any common areas shared by the occupants of the Development, including, without limitation, cigarettes, pipes, cigars or other products by the Unit Owners or their tenants, guests or visitors. Smoking shall be prohibited in all Common Areas shared by the Owners and Occupants of the Development, including, without limitation all lobby areas, hallways, corridors, walkways, lounges, garage areas and roof terrace areas. Subject to applicable ordinances of the City and County of San Francisco and State of California which may restrict or prohibit smoking in the Development, smoking shall be permitted within a Unit Owner's Unit and any Exclusive Use Common Area terrace or balcony appurtenant thereto. Smoking anywhere in the Development shall be subject to applicable ordinances of the City and County of San Francisco and State of California.

Section 7.31 **Moving In/Out and Contractor Rules.** The Board may adopt Rules regulating the moving of property in and out of a Unit and means of ingress and egress to and from the Unit and Common Area. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for elevator cabs, disposal of moving boxes, the payment of fees or posting of collateral or security to pay for damage to the Common Area, and the hiring of a security guard to monitor any open doors, garage areas, basement areas, elevators or other portions of the Common Area during the moving process. The Association shall have the right to charge a Unit Owner reasonable fees and costs related to an Owner's move-in or move-out of a Unit, including, without limitation, costs for a security guard as described above. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for elevator cabs, disposal and storage of construction materials and equipment, construction access routes, the posting of collateral or security to pay for any damage to the Common Area and fees and costs related to the foregoing to be imposed on the Unit Owner by the Association. Notwithstanding the foregoing, Declarant in its sole discretion may issue special rules for hours and use of loading areas during initial move-ins of the Units, including scheduling move-ins at any time of day or night on any day of the week.

ARTICLE 8

MORTGAGE PROTECTION

Section 8.1 **Validity of Mortgage Lien.** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Unit Owner whose title is derived through foreclosure or trustee's sale or otherwise.

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Section 8.2 **Notice to Eligible Mortgagees and Eligible Insurers and Guarantors.** Upon written request to the Association identifying the name and address of the Eligible Mortgagee or Eligible Insurer or Guarantor and the applicable Unit address, such Eligible Mortgagee or Eligible Insurer or Guarantor shall be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor, as applicable;

(b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unpaid for a period of sixty (60) days;

(c) Any default in the performance of an obligation under the Governing Documents by a Unit Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer or Guarantor which remains unperformed for a period of sixty (60) days;

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

(e) Any proposed action which would require the consent of Mortgagees of First Mortgages as specified in Section 8.6.

Any failure by the Association to give such notice of default shall not in any event relieve the Unit Owner of responsibility to cure the default or prevent the Association from enforcing the performance of the defaulted obligations by any of the procedures provided for in the Governing Documents.

Section 8.3 **Notice of Condemnation or Destruction.** In the event of the total or substantial destruction of, or the commencement of eminent domain proceedings or other acquisition procedures by a condemning authority against the Development or any portion thereof, Mortgagees of First Mortgages shall be given timely written notice of such destruction or proceedings.

Section 8.4 **Limitation on Right of First Refusal.** The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or any similar restriction in favor of the Association. In the event there is permitted a right of first refusal in favor of any other Person, it shall not be based upon the race, color, religion, sex, sexual preference, marital status, national origin or ancestry of the vendee and it shall not impair the rights of a holder of a First Mortgage:

(a) to foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage;

(b) to accept a deed (or assignment) in lieu of foreclosure in the event of a default by the Mortgagor; or

(c) to sell or lease a Unit acquired by the Mortgagee.

Section 8.5 **Priority as to Proceeds and Awards.** Any language contained in this Declaration to the contrary notwithstanding, no Unit Owner and no other party shall have priority over any rights of Mortgagees pursuant to their Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Area.

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Section 8.6 **Consent by Mortgagees to Amendments.** Without the vote or prior written consent of sixty-seven percent (67%) of the total voting power of the Association and the approval of a majority of the Mortgagees of First Mortgages (unless a higher percentage of voting power of Mortgagees of First Mortgages is specifically required elsewhere in this Declaration), the Association shall not materially and adversely, with respect to such mortgages, amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following:

(a) Voting rights;

(b) Assessments, Assessment liens or priority of such liens;

(c) Reserves for maintenance, repair and replacement of the Common Area;

(d) Insurance or fidelity bonds;

(e) Rights to use the Common Area or Exclusive Use Common Area;

(f) Responsibility for maintenance and repair of the Development;

(g) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;

(h) Boundaries of any Unit;

(i) Reallocation of interests in the Common Area or Exclusive Use Common Area;

(j) Convertibility of Units into Common Area or of Common Area into Units;

(k) Leasing of Units;

(l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit;

(m) A decision by the Association to establish self management when professional management has been required previously by a Mortgagee of a First Mortgage;

(n) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(o) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs;

(p) Any provisions which are for the express benefit of Mortgagees, Insurers or Guarantors of First Mortgages on Units; or

(q) Amendments to provisions governing the fundamental purpose for which the Development was created (such as a change from residential use to a different use).

For purposes of this Section 8.6, implied approval by any Mortgagee of a First Mortgage shall be assumed when such Mortgagee fails to submit a response to any written proposal for additions or amendments to the Governing Documents within sixty (60) days after the Mortgagee receives proper

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notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 8.7 Restrictions on Certain Changes. Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area by fire or other casualty, unless two-thirds (2/3) of all Mortgagees of First Mortgages (based on one vote for each Unit encumbered) have given their prior written approval, neither the Association nor the Unit Owners shall be entitled:

(a) By act or omission, to seek to abandon or terminate the Development, including, without limitation, in the event of damage or destruction of all or any portion of the Development;

(b) To change the Common Interest or obligations of any Condominium for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Condominium in the Common Area;

(c) To partition or subdivide any Unit;

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

(e) To use hazard insurance proceeds related to losses of Development property (whether related to Units or Common Area) for other than the repair, replacement or reconstruction of such Development property except as provided by statute in case of substantial loss of the Units or Common Area.

Section 8.8 Consent to Terminate Legal Status of Development. Except as provided by statute or any other provision of the Governing Documents, in case of substantial destruction or condemnation of the Development, the consent of Unit Owners of Units holding at least seventy-five percent (75%) of the voting power of the Association and the approval of sixty-seven percent (67%) of Mortgagees of First Mortgages shall be required to terminate the legal status of the Development as a condominium Development, including without limitation, in the event of damage or destruction of all or any portion of the Development.

Section 8.9 Annual Budget and Financial Statements. Upon written request to the Association, Eligible Mortgagees shall be entitled to receive copies of the annual Association Budget and audited financial statements within the same time period that these items are distributed to Members.

Section 8.10 Voting Rights on Default. In case of default by any Owner, a First Mortgagee of that Owner may (i) pay any Assessments or take any action reasonably necessary to cure a default by such Owner with the same effect as such cure by the Owner itself and, (ii) upon notice to that Owner and the Association, exercise the voting rights of that Owner.

Section 8.11 Payment of Taxes and Insurance. First Mortgagees may, individually or jointly, pay taxes or other charges that are in default and that may or have become a charge against any Unit, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area. First Mortgagees making such payments that would otherwise be owed and paid by the Association shall be owed a reimbursement for such expenditures from the Association, provided that the Association shall not be obligated to reimburse such

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First Mortgagee for such expenditures that are the obligation of the Unit Owner who is the mortgagor of such First Mortgagee.

Section 8.12 Existing Defaults. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration existing as of the date of such transfer which is noncurable or of a type which is not practical or feasible to cure.

ARTICLE 9

INSURANCE, DAMAGE OR CONDEMNATION

Section 9.1 Fire and Casualty; Property Insurance. The Association shall obtain a master blanket policy or policies of insurance covering all of the Development including all improvements now or hereafter constructed, erected or installed in the Development and all building service equipment and fixtures installed and located thereon or used in connection therewith; provided that each Unit Owner shall maintain its own property insurance coverage for all upgrades or additions to the fixtures and improvements installed in the Units by Declarant at the time of original construction of the Unit, as described in Section 9.10. The blanket policy or policies of insurance to be obtained by the Association pursuant to the preceding sentence shall insure the (i) Owners, (ii) Association, (iii) Declarant, and (iv) Mortgagees, as their interests may appear, against loss or damage by the perils covered by, and shall provide coverage at least as broad as, a current ISO "special form" policy or its equivalent (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) which may also be extended to include flood and earthquake insurance. Coverage shall be in an amount or amounts equal to full replacement value (i.e., one hundred percent (100%) of replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage and without any deduction for depreciation) with an "agreed amount" endorsement or its equivalent, if available, and an "inflation guard" endorsement payable to the Association. Each such policy required to be maintained hereunder may be subject to a "deductible" or self-insurance amount as the Board deems prudent under the then existing circumstances. Each such policy shall provide for full waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Declarant and their respective officers, directors, partners, agents, employees and tenants, if any, and as to all defenses based upon acts of the insureds or the existence of co-insurance (provided, however, that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waivers between the Association and Owners set forth herein). The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(a) **Endorsements.** The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall also include, without limitation, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) Ordinance or Law, (iii) Replacement Cost, (iv) pollution claims including mold, and (v) plate glass, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board. The insurance policy or policies to be maintained by the Association pursuant to this Section 9.1 shall also include an endorsement requiring thirty (30) days of advance notice of cancellation or non-renewal (except for cancellation for non-payment, which shall require 10 days of advance notice).

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(b) **Deductible**. The amount of any deductible shall be paid by the Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board. When a claim is made on the Association's property insurance policy, an Owner is responsible for payment for repair of damage up to the amount of the property insurance policy deductible in the following circumstances: (i) where damage is caused by the fault of the Owner or that Owner's tenant or family members, Invitees, agents, pets, and/or (ii) where damage is caused by the failure of some portion of, or component, in such Owner's Unit which the Owner is responsible maintain and repair. In cases where the damage affects more than one Unit, or a Unit and the Common Area, and subsection 9.1(b)(i) or (ii) above do not apply, each Owner is responsible for the cost to repair the Owner's Unit (and the Common Area immediately abutting or exclusively serving the Owner's Unit) up to the amount of the Association property insurance policy deductible. If the cumulative cost of such repairs exceeds the Association property insurance policy deductible, the amount of the deductible shall be prorated among the claimants based upon the proportion of each claimant's costs for repairs to his or her Unit and the Common Area bears to the total cost of repairs. The Association may levy an Individual Special Assessment against an Owner's Unit as authorized by Section 4.6 for the Owner's share of the Association property insurance policy deductible.

(c) **Scope of Coverage for Condominium Units**. Without limiting the foregoing, with respect to the Condominium Units the Association insurance policy or policies described in this Section 9.1 above shall also include, without limitation, coverage for the following standard package of fixtures and improvements offered by Declarant as part of the original construction of the Units (including upgrades installed by Declarant or its contractors at the time of original construction and any equivalent replacements thereof): all built-in or set-in appliances; cabinets; countertops; interior walls, doors and windows; ceiling, floor and wall surface materials and coverings (e.g., paint, wallpaper, mirrors, carpets, tiles and hardwood floors); fixtures (including gas, electrical and plumbing); telecommunication and internet lines, cables, wiring and conduits; heating and air conditioning systems and water heaters. Such coverage shall be in the amount designated by Declarant as the replacement cost thereof based upon the standard package of such fixtures and improvements offered to all Condominium Unit Owners as part of the original construction of the units and upgrades installed in any unit by Declarant or its contractors at the time of original construction. Reference is made to Section 9.10 of this Declaration for Unit Owners' property insurance obligations with respect to the Units.

Section 9.2 Boiler and Machinery Insurance. The Association shall obtain a policy of Boiler and Machinery Insurance for any items listed below which are not covered in or as part of the fire and casualty insurance listed in Section 9.1, insuring the Owners, including the Association, against loss or damage to or because of boilers and other machinery, including but not limited to, all machinery and equipment for heating, ventilating, air conditioning, power generation and similar purposes (including, but not limited to, loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, lightning, windstorm, water and other special extended coverage risks and the costs of demolition and debris removal) equal to full replacement value without deduction for depreciation with an "agreed amount" endorsement or its equivalent, if available, and an "inflation guard" endorsement payable to the Association.

The insurance policy to be maintained by the Association pursuant to this Section 9.2 shall also include, to the extent available on commercially reasonable terms as may be determined by the Board, one or more of the following endorsements or their equivalents: (i) ISO Condominium Association Coverage Form or its equivalent, (ii) Ordinance or Law, (iii) Replacement Cost, (iv) Agreed Amount, (v) Consequential Damage, (vi) Hazardous Substances, and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

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Section 9.3 **Liability Insurance.** The Association shall obtain and maintain a policy or policies of an occurrence version Comprehensive General Public Liability Insurance with combined single limit of Bodily Injury and Property Damage Liability limits not less than Three Million Dollars ($3,000,000) arising out of a single occurrence subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5805(b)(2). The Three Million Dollars ($3,000,000) coverage described in the preceding sentence may be a combination of primary and excess policies. Such policy or policies shall include coverage for bodily injury, emotional distress, wrongful death and/or property damage, and shall name as insured and shall separately protect the Owners, the Association, the Board, Declarant including their respective officers, directors, partners, agents, members, employees (including any manager appointed hereunder) family members, and their successors and assigns (both individually and as a class), and any manager against any liability to the public or to any Owner (and such Owner's successors, assigns, tenants or lessees) resulting from, arising from, or incident to the ownership, operation, maintenance and use of the Common Area by the Association and the performance of its duties under the Declaration by the Association. Such policy or policies of liability insurance shall be primary and non-contributory with any other liability insurance policy maintained by such insureds covering the same liability.

Such policy or policies of liability insurance to be maintained pursuant to this Section 9.3 shall include the following extensions of coverage, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage: (i) Products/Completed Operations, (ii) Independent Contractors, (iii) Blanket Contractual Liability, (iv) Broad Form Property Damage, (v) Host Liquor Liability, (vi) Non-Owned and Hired Automobile Liability, (vii) Employees as Additional Insureds, (viii) Personal Injury Liability (Libel, Slander, False Arrest and Wrongful Eviction) with the "Employee Exclusion" deleted, (ix) Cross Liability Endorsement, (x) Severability of Interest, (xi) Hostile Fire Amendment to the Pollution Exclusion, and (xii) Terrorism (subject to determination by the Board that such Terrorism coverage is desirable and available at reasonable rates).

The Association may purchase and maintain a policy or policies of excess or umbrella liability to afford protection over and above the underlying Commercial General Liability, Automobile Non-Ownership and Hired Car Liability, Employers Liability, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage. In the event such policy or policies of excess or umbrella insurance coverage is obtained, the Board shall determine a reasonable amount of excess or umbrella liability insurance to protect the interests of the Development.

Any tort cause of action against any Owner arising solely by reason of an ownership interest as a tenant in common of the Common Area shall be brought only against the Association, pursuant to Section 5805 of the Civil Code, and not against any such Owner, if the Association maintained and has in effect for the tort cause of action, one or more policies of insurance including coverage for general liability of the Association, and the coverage is in the minimum amount of Three Million Dollars ($3,000,000). In no event shall such liability insurance coverage be less than the statutory minimum requirements for Association liability insurance described in Civil Code Section 5805. Reference is made to Civil Code Section 5805 for further detail regarding statutory minimum requirements for Association liability insurance.

Section 9.4 **Board Members and Officers Liability.** The Association shall maintain a policy or policies insuring the Owners, individually and collectively, against claims arising out of or based upon negligent acts, errors, omissions or alleged breaches of duty of any director or any officer of

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the Association while acting in their capacity as such in the amount of at least One Million Dollars ($1,000,000) for each occurrence, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such coverage; provided that under no circumstances may the minimum amounts of coverage be less than that specified in Civil Code Section 5800(a)(4). Such limits are to be reviewed by the Board not less frequently than annually. Said policy or policies shall provide for a full waiver or subrogation against the insureds, a full waiver of all defenses based upon acts of insureds and shall further provide that said policy or policies cannot be canceled or modified without at least thirty (30) days of advance notice to the Association of cancellation or non-renewal (except for cancellation for non-payment, which shall require ten (10) days of advance notice). Reference is made to Civil Code Section 5800 for further detail regarding statutory minimum requirements for Association officers and directors liability insurance.

Coverage described in this Section 9.4 may include one or more of the following extensions: (i) Severability of Interest, (ii) Employment Practices Liability, (iii) Outside Directorship Liability, (iv) Coverage for Failure to Maintain Insurance, (v) Full Prior Acts, (vi) Extended Reporting Period, and (vii) 90 day advance notice of cancellation or non-renewal, subject to the Board's good faith determination of availability and cost-effectiveness in relation to the risk and premium to be charged for such extensions of coverage.

Section 9.5 **Fidelity Bond or Insurance.** The Association shall maintain, or be covered by, a fidelity bond or policy of insurance against dishonest acts on the part of any Persons entrusted with or permitted to handle funds belonging to or administered by the Association including the professional manager and his employees. Such fidelity bond or policy of insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection which is not less than the sum of three (3) months' Assessments on all Condominiums in the Development plus the Association's reserves. An appropriate endorsement shall be added to such policy or bond, if necessary, to cover any Persons who serve without compensation, including directors, if such policy or bond would not otherwise cover the acts of volunteers.

Section 9.6 **Workers' Compensation Insurance.** The Association shall obtain Workers' Compensation Insurance to the extent required to comply with any applicable law.

Section 9.7 **Earthquake Insurance.** The Association shall obtain earthquake insurance only if a majority of the Owners affirmatively vote to purchase such insurance. If the Owners so elect to purchase such earthquake insurance, the insurance may be subsequently cancelled on a vote of the majority of the Owners. If cancelled, the Board shall make reasonable efforts to notify the Owners of the cancellation prior to the cancellation, but in no event more than thirty days after the cancellation.

Section 9.8 **Insurance Required by Certain Lenders.** Notwithstanding Sections 9.1 through 9.6 or any other provision of this Declaration, in the event the casualty insurance, boiler and machinery insurance, liability insurance and fidelity bond requirements established for condominium projects by FNMA or FHLMC are greater than the insurance and fidelity bond requirements specified in this Declaration, the FNMA and FHLMC requirements, whichever are greater, shall govern and such insurance or fidelity bond shall be maintained by the Association. This requirement as to FNMA or FHLMC shall be effective so long as FNMA or FHLMC is a Mortgagee, Insurer or Guarantor of a Mortgage or an Owner of a Condominium within the Development; provided, however, to the extent such coverage is not available or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

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Section 9.9 General Policy Provisions; Notice to Owners; Board Authority to Revise Insurance Coverage; Insurance Trustee.

(a) Each of the policies of insurance obtained by the Association pursuant to this Article 9 shall include as named insureds the Association, as trustee for the Owners, the Association's directors and officers, Declarant, and the Owners and their family members, and shall provide that the insurers may not cancel, change or refuse to renew the policies without first giving thirty (30) days' prior written notice to the Association, the Owners and the Mortgagees, except for cancellation for nonpayment of insurance premiums, which shall require ten (10) day's prior written notice to the Association, the Owners and the Mortgagees. Each such policy shall also provide that coverage shall not be prejudiced by any act or neglect of any Condominium Owner except to the extent such prejudice is unavoidably imposed by law or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control. Each such policy shall contain both a full waiver of subrogation by the insurer as to any and all claims against the Association, Declarant and any Owners. Mortgagees and their respective partners, directors, officers, family members, agents, employees and tenants and a waiver of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured except to the extent such invalidity is unavoidably imposed by law. Each such policy shall also provide that the coverage provided with respect to any claim shall not be adjusted based on contribution related to insurance policies purchased by any Owner or his Mortgagee.

(b) All such policies of insurance and bonds shall be obtained from insurance companies with both a financial rating of Class VII or better and a policyholder's rating of A- or better by Best's insurance rating guide. In the event Best's should revise its rating system, the Association shall select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by Best's or, in the event Best's discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Board may select.

(c) The Association shall provide the Owners with a summary of the Association's property, liability, earthquake, flood, and fidelity insurance policies, as required by Civil Code Sections 5300 and 5810, thirty (30) to ninety (90) days before the end of the Association's fiscal year.

(d) Subject to Section 9.8 and any statutory insurance requirements, the Board shall have the authority to deviate from the insurance requirements for the Owners and the Association set forth in this Article IX in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the insurance coverage from the coverage required in this Article IX, the Board shall make reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction in coverage. The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is no longer to obtain one or more of the required insurance coverages to the extent the insurance is no longer available, or if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

(e) The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year, and make such adjustments to the policies as the Board considers to be in the best interests of the Association. The Board shall have the right to vary from the insurance required by this Declaration in the Board's reasonable discretion, which may include, without limitation, obtaining additional insurance policies or coverages, in higher amounts and/or policy limits.

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(f) Subject to the rights of Mortgagees, the proceeds from the Association property insurance policy(ies) shall be payable to the Association or an insurance trustee to be held and expended for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. Such trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust.

(g) During the time that Declarant has any ownership interest in the Development or Property, Declarant shall have the right but not the obligation to obtain any additional insurance coverage and additional policy limits that Declarant deems appropriate in its sole discretion, including, without limitation, the same insurance coverages described in this Article IX, but with higher policy limits and amounts of coverage, or additional insurance policy(ies) and coverages not described in this Article IX, with policy limited and amounts of coverage that Declarant deems appropriate in its sole discretion.

Section 9.10 Unit Owner's Liability, Property, and Automobile Insurance.

(a) **Liability Insurance**. Each Unit Owner shall maintain its own policy or policies of liability insurance against any liability resulting from any injury or damage occurring within the Owner's Unit.

(i) **Residential Unit Owners**. Each Residential Unit Owner shall, at such Owner's sole cost and expense, maintain a general liability insurance policy insuring the Residential Unit Owner against liability for injury to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Residential Unit by such Residential Unit Owner or such Owner's tenant, or their family members, employees, agents, guests or Invitees. Such policy shall have limits of liability of not less than Five Hundred Thousand Dollars ($500,000) per occurrence and One Million Dollars ($1,000,000) general aggregate.

(ii) **Commercial Unit Owners**. Each Commercial Unit Owner shall, at such Owner's sole cost and expense, maintain a general liability insurance policy insuring the Commercial Unit Owner against liability for injury to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Commercial Unit by such Commercial Unit Owner or such Owner's tenant, or their family members, employees, agents, customers, guests or Invitees. Such policy shall have limits of liability of not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate, and shall include so-called "Dram Shop" or liquor liability coverage (with a minimum amount of One Million Dollars ($1,000,000) liquor liability coverage per occurrence) if the Commercial Unit is used for serving or dispensing alcoholic beverages. If a particular use adopted by a Commercial Unit Owner causes an increase in the cost of the Association's liability policy, the Association may collect the amount of the increase from the applicable Commercial Unit Owner as an Individual Special Assessment.

(b) **Property Insurance**. Each Unit Owner shall maintain its own policy or policies of property insurance providing coverage against losses to personal property located within the Owner's Unit and providing coverage for all upgrades or additions to the fixtures and improvements installed in the Unit by a Unit Owner after the time of original construction of the Unit, but only to the extent that the replacement cost of any such upgrades or additions exceeds the amount of coverage provided by the Association's insurance described in Section 9.1 of this Declaration as determined on the date that immediately precedes the date of the damage or destruction of the upgrades, additions, fixtures or improvements in such Owner's Unit. With respect to the Commercial Units, the above-described property insurance to be maintained by the Commercial Unit Owners shall include coverage for the full replacement value of tenant improvements, installation, fixtures and equipment within the Commercial Units.

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(c) **Automobile Insurance**. Each Owner that has been assigned or granted a parking space in the Development shall, at its sole cost and expense, maintain an automobile insurance policy insuring against damage to all vehicles owned or operated by such Owner as well as liability for bodily injury and property damage caused to others arising from such operation, including coverage for owned, hired and non-owned automobiles, with liability limits of not less than that required by law.

(d) Any insurance maintained by an Owner shall not (i) separately insure any property covered by the Association's insurance policy or policies described in this Article 9, or (ii) invalidate any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable to the Association under the Association's policies that results from the existence of such Owner's insurance policy will be chargeable to the Owner who acquired such Owner's insurance policy. The Association may levy an Individual Special Assessment against the Owner's Condominium to collect the amount of the diminution.

(e) Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners (and occupants), the Association, and any first mortgagee of the Owner's Unit. The Board has no obligation to monitor or enforce any Unit Owner's compliance with this section.

(f) Each Owner should seek the advice of a qualified insurance consultant regarding personal liability insurance coverage and property insurance coverage appropriate for the Owner, the Owner's personal property and the Owner's Unit, and to ensure compliance with the provisions of this Section 9.10. Such insurance would typically be in the form of a condominium unit owner's policy known as an "HO-6" policy, but may be another form of policy. Each Owner should consult with a qualified insurance consultant regarding the availability of other insurance coverages, endorsements or riders that may be appropriate for the Owner and the Owner's Unit in order to provide desired coverage, including, without limitation (i) all risk endorsement, (ii) loss assessment coverage, (iii) living expense endorsement, (iv) rental coverage endorsement (if applicable), and (v) coverage for the Association master policy deductible.

(g) The Association shall have the authority to enforce the Unit Owners' insurance obligations described in this Section 9.10 and require that each Owner maintain all of the required insurance coverages. Notwithstanding the foregoing, the Association and its directors, officers and agents have no duty or obligation to monitor, verify or enforce any Owner's compliance with this Section 9.10.

Copies of all insurance policies that an Owner is required to maintain pursuant to this Declaration, or a certificate of such insurance, shall be delivered to the Association upon request. The acceptance of a certificate of insurance by the Association shall not constitute a waiver of any insurance requirements set forth herein.

Section 9.11 **Payment of Premiums.** Insurance premiums for the Association insurance policies required hereby shall be a Common Expense to be included in the monthly Assessment levied by the Association. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Association to be used solely for the payment of the premiums for such policies.

Section 9.12 **Material Damage or Destruction.** If any portion of the Development is Materially Damaged or destroyed by fire or other casualty, then the following events shall occur:

(a) A special Unit Owners meeting shall be held within sixty (60) days of the date of the material damage or destruction. Said Unit Owners meeting shall be called by the Board, the president

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or any two (2) Unit Owners if the meeting has not been called within fifteen (15) days of the damage or destruction and the Secretary shall give thirty (30) days written notice of the meeting to each Unit Owner and his Mortgagees of record, and notice of said meeting shall be delivered to Declarant. Said Unit Owners meeting shall be held at a suitable location on the Development or as close thereto as practicable which location shall be specified in such notice; Declarant shall be entitled to attend said Unit Owners meeting.

(b) The Association shall oversee the repair or reconstruction of the Development in substantial accordance with the latest available construction plans and specifications as hereinafter provided unless in such special Unit Owners meeting at least three-quarters (3/4) of the total voting power of Class A Owners and Class B Owners casts votes against such repair or reconstruction in which event the provisions of Section 9.13 shall immediately become applicable.

(c) Unless, in the manner provided above, the requisite number of votes are cast against such repair or reconstruction, all of the insurance proceeds payable on account of such damage or destruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Board. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository and which shall be reasonably acceptable to the Board. The restoration or reconstruction shall be substantially in accordance with the latest available construction plans and specifications for the Development modified as may be required by available materials, state of the art construction and applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by a majority of all Owners; provided, however, any Owner's requested modification to the latest available construction plans and specifications of his Unit shall be approved unless (i) the cost of construction pursuant to the modification exceeds the cost of reconstruction according to the latest available construction plans and specifications, (ii) it affects the Common Area, or (iii) it affects the square footage of, permitted use of, utility service to, easements in favor of or number of Units.

(d) The Board shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor") and architect (the "Architect") for the repair or reconstruction contemplated by this Section.

(e) The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository upon the receipt of appropriate mechanics lien releases and upon the certification of the Construction Consultant, the General Contractor and the Architect dated not more than ten (10) days prior to any such request for disbursement setting forth the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or is justly due to contractors, subcontractors, materialmen, engineers or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, giving a brief description of such services and materials and the principal categories thereof, the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

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(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in Section 9.12(e)(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

(f) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, the Association shall first use sums from its accounts and, if necessary, shall levy a Special Assessment on all of the Owners in accordance with Section 4.5 to restore or rebuild the Development.

(g) In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction, and the sums from the Association's accounts are insufficient to make up the deficiency, and a Special Assessment levied on the Owners in accordance with Section 4.5 is insufficient to make up the deficiency, then the Board may supplement the insurance proceeds and other funds by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

(h) All such funds to be supplied by the Association shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section.

Section 9.13 Owners Vote Not to Rebuild. Subject to the provisions of Section 8.7 hereof and the rights of Mortgagees thereunder, in the event the Unit Owners vote not to rebuild as described in Section 9.12(b) above, the Association shall, acting as attorney-in-fact for all the Unit Owners, sell the remaining property on terms satisfactory to the Board. The net proceeds of the sale, together with the insurance proceeds, accrued reserves, interest and other funds, shall thereupon be distributed to the Unit Owners according to the following procedure: the Board shall retain, at the Association's expense, an appraiser who is a member of the American Institute of Appraisers or other nationally recognized appraiser's organization who shall determine the fair market value of each Unit as it existed immediately prior to the damage or destruction and whose determination of value shall be final. The Board shall then distribute to each Unit Owner and such Owner's Mortgagees the following amounts: (a) that percentage of insurance and net sale proceeds equal to such Unit Owner's Unit's fair market value immediately prior to the damage or destruction divided by the total fair market value of all the Units immediately prior to such damage or destruction; and (b) that percentage of accrued reserves, interest and other funds equal to the Annual Assessment against such Unit Owner's Unit divided by the total Annual Assessments against all Units, each as of the most recent Annual Assessment immediately prior to such damage or destruction.

Section 9.14 Damage or Destruction Not Considered Material. In the event that any portion of the Development is not Materially Damaged as a result of fire or other casualty the Development shall be repaired and reconstructed (after the holding of a special Owners meeting in which a Special Assessment is approved unless exempted by Section 9.12) in accordance with the provisions for repair and reconstruction as set forth in Section 9.12 hereinabove.

Section 9.15 Substantially Full Insurance Settlement. Notwithstanding any provision of Section 9.13 to the contrary, if the insurance carrier offers ninety-five percent (95%) or more of the full

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amount required to repair and restore all the damage, then the Board shall, without a vote of Members, contract to repair or rebuild the damaged portions of the Development in the manner provided in Section 9.12 hereinabove, so long as the deficiency in required funds for repair and restoration is covered by Special Assessments or the Board borrowing on behalf of the Association as described in Section 9.12 above.

Section 9.16 Emergency Repairs. In the event of a casualty, there may be a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulations pending settlement of insurance claims and prior to procuring bids for performance of restoration work. As such, without waiting to obtain insurance settlement or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances and the Board may charge the Association's operating accounts for the costs thereof.

Section 9.17 Notice of Casualty. Within (60) days after any damage or destruction occurs which invokes the provisions of Sections 9.12 through 9.16, the manager or the Board or, if they do not, any Owner, the insurer, the insurance trustee or any Mortgagee of any such Owner shall record a sworn declaration which shall state that such damage has occurred, shall describe such known damage, shall name any insurer against whom claim is or may be made, shall name each insurance trustee and shall state that such sworn declaration is recorded pursuant to this Section of this Declaration and that a copy of such declaration has been served on each Owner pursuant to the provisions of this Declaration.

Section 9.18 Condemnation. In the event of any taking of any Unit, or a part thereof, by eminent domain, the Owner of such Unit shall be entitled to receive the award of such taking after all mortgages and liens on the Unit have been satisfied or otherwise discharged. After acceptance thereof and if such Owner shall vacate the Unit as a result of such taking, the Owner and his Mortgagees shall be divested of all interest in the Development.

In the event of a taking by eminent domain of the Common Area or more than one Unit, or any parts thereof, at the same time, the Association shall represent the affected Owners in the negotiations and shall propose the method of division of the proceeds of condemnation where the compensation is not apportioned among the affected Owners and their respective Mortgagees by a court judgment or by agreement between the condemning authority and each of the affected Owners. Such compensation available to the affected Owners shall be distributed among the affected Owners and their respective Mortgagees, as their interest may appear, according to the relative fair market value of the Condominiums affected by the condemnation as determined by an independent appraisal conducted by an appraiser who is a member of the American Institute of Appraisers or other nationally-recognized appraiser's organization and whose appraisal shall be final. Said appraiser shall be retained by the Board and paid by the Association.

Upon the taking of any Unit(s) which constitutes less than a total taking of all Units, the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Map (if necessary) and this Declaration to eliminate from the Development the Units so taken and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Units in the Development and all Owners of the remaining Units shall convey to each remaining Owner an equal proportionate share of the undivided interests in the Common Area.

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ARTICLE 10

DISPUTE RESOLUTION PROVISIONS

Section 10.1 Enforcement of CC&Rs and Dispute Resolution.

(a) The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration together with any amendments hereto or to the Articles, Bylaws or other Governing Document(s) and in such action shall be entitled to recover damages and/or injunctive relief as well as reasonable attorneys fees as may be ordered by the Court. The Association shall have the exclusive right of enforcement of provisions of the Governing Documents relating to architectural control and the Association Rules, unless the Association is unwilling or unable to cause such enforcement, in which case any Owner who otherwise has standing shall have the right, after notice to the Association, to undertake such enforcement. Failure by the Association or by any Unit Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Board may perform any act reasonably necessary to resolve any civil claim or action through alternate dispute resolution proceedings such as conciliation, mediation, binding arbitration, or non-binding arbitration.

(c) Any arbitration required under this Section 10.1 will be conducted in accordance with the following rules and procedures:

(1) If the Declarant is a party, the Declarant shall advance the fees necessary to initiate the arbitration, with the costs and fees, including ongoing costs and fees to be paid as agreed by the parties and if they cannot agree as determined by the arbitrator(s) with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s). Without limiting the foregoing, the arbitrator's authority to allocate fees and costs shall expressly exclude each party's own attorneys' and experts' fees and costs, for which each party shall bear its own fees and costs.

(2) The arbitration shall be administered by a neutral and impartial person(s).

(3) A neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), and the arbitrator(s) to be appointed within a specified period of time, which in no event shall be more than sixty days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124 of the Code of Civil Procedure.

(4) Venue of the arbitration shall be in the county where the subdivision is located unless the parties agree to some other location.

(5) The arbitration shall be promptly and timely commenced in accordance with (i) the rules of the arbitration, or if the rules don't specify a date by which the arbitration must commence, then (ii) a date as agreed to by the parties, and if they cannot agree, (iii) a date determined by the arbitrator(s).

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(6) The arbitration shall be conducted in accordance with the rules and procedures of the JAMS Streamlined Arbitration Rules and Procedures.

(7) The arbitration shall be prompt and timely concluded.

(8) The arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause.

Section 10.2 Pre-Litigation Requirements; Claims for Declaratory Relief or Enforcement of Governing Documents. Prior to initiating the prosecution of a civil action by the Association against any Unit Owner(s) or by a Unit Owner against the Association or any other Unit Owner(s), the parties shall be subject to the following requirements in subsections (a) and (b) below.

(a) With respect to any internal dispute between the Association and a Unit Owner involving their rights, duties, or liabilities under the Davis Stirling Act, under the Nonprofit Mutual Benefit Corporation Law, or under this Declaration or the Governing Documents, the Board shall develop fair, reasonable, and expeditious dispute resolution procedures in accordance with the requirements of Civil Code Sections 5900-5920 (or defer to the default procedures in Section 5915). The parties to such a dispute shall comply with the meet and confer requirements set forth in Sections 5900-5920 of the Civil Code, including any procedures developed by the Association as described above. The dispute resolution procedures described Civil Code Sections 5900-5920 are intended to provide a simple and efficient intra-association dispute resolution method, and shall be undertaken in good faith by the parties to any such dispute.

(b) With respect to an action solely for declaratory, injunctive or writ relief to enforce the Governing Documents, the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or for declaratory relief or injunctive relief to enforce the same in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000), the Board or the Unit Owner, as applicable shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 5930 of the Civil Code. This obligation shall not apply to actions in small claims court.

(c) As required by Civil Code Section 5965, Unit Owners shall annually be provided with a summary of the provisions of Sections 5925-5960 of the Civil Code, which shall specifically reference Section 5930, and shall include the following language:

> "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the governing documents or the applicable law."

The summary shall be provided either at the time the pro forma budget is prepared and distributed pursuant Section 5310. The summary shall include a description of the Association internal dispute resolution process, as required by Section 5920 of the Civil Code.

Section 10.3 Required Actions Prior to Certain Legal Actions or Proceedings.

(a) Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Section 10.3, the Board shall not cause nor permit the Association to institute any significant legal action or proceeding, including any mediation, arbitration or judicial reference

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proceeding, against Declarant or any person without providing the Unit Owners with at least thirty (30) days' prior written notice of the Association's intention to institute such legal action or proceeding, including any "Calderon Notice" or any other notice intended to notify Declarant of a potential claim or legal proceeding. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or annual assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is being prosecuted. For purposes of this Section 10.3, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

(1) The levy of a special assessment to fund all or any portion of the action or proceeding;

(2) The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;

(3) The amount of the claim is in excess of twenty-five thousand dollars ($25,000); or

(4) A material adverse effect on the ability to sell and/or refinance the Units within the Development during the period the action or proceeding is being prosecuted.

Notwithstanding subsection (a) above, if the Board in good faith determines that there is insufficient time to provide prior notice to the Unit Owners as required in this Section 10.3 before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required in this provision.

(b) Pursuant to Civil Code Section 6150, not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damages to the Units that arise out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the membership records when the notice is provided. This notice shall specify the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of the meeting.

Notwithstanding subsection (b) above, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Board may give the notice, as described above, within thirty (30) days after the filing of the action.

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(c) Notwithstanding anything to the contrary in this Declaration, the Board shall not cause nor permit the Association to institute any significant legal proceeding, including, without, limitation any civil action, mediation, arbitration, or judicial reference proceeding against Declarant without first obtaining the affirmative vote of Members representing no less than seventy-five percent (75%) of the total voting power of all of the Members of the Association, excluding Declarant; provided that the vote of the Members is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws related to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws. Notwithstanding the foregoing, the reference to any procedures in this Section 10.3 shall not provide the Owners or the Association with any rights or remedies not otherwise available to them.

Section 10.4 Design or Construction Defect Claims. Any action or legal proceeding by the Association or any Unit Owner against Declarant, or against any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant, for the design and/or construction of the Development, or any element thereof, which action or legal proceeding pertains to any dispute, claim, issue or controversy (each, a "Dispute") relating to or based upon a claim for defects or negligence in the design or construction of improvements within the Development, shall be resolved according to the dispute resolution procedures contained in the Limited Warranty attached to this Declaration as Exhibit C. Notwithstanding anything in this Declaration or in the Limited Warranty to the contrary, in order to facilitate the resolution of any such Dispute in the best interests of the Association, at least one member of the Board with the authority to settle the Dispute shall be required to be in attendance at all times and shall have the obligation to participate in any meeting, conference, proceeding, hearing or other similar situation in which settlement discussions may occur concerning a "Dispute" described above. The provisions of this Section 10.4 are in addition to, and not in place of, the requirements of Section 10.3. Further, for actions and legal proceedings subject to this Section 10.4, any and all notices under Section 10.3 shall also include a list of any and all defect and design claims being brought and an estimate of repair costs. The provisions of this Section 10.4 shall not be amended without the prior written consent of Declarant

Section 10.5 Notice of Right to Repair Law; Title 7. The Association and Unit Owners are hereby advised of the existence of the procedures codified at Title 7 of Part 2 of Division 2 of the California Civil Code (Section 895 et seq.) (the "Right to Repair Law"), which became effective on January 1, 2003. These procedures impact the legal rights of the Unit Owners and the Association with respect to design and construction defect disputes and related claims involving Declarant.

Section 10.6 Subsequent Purchasers of Units. Pursuant to Civil Code Section 912(h), each Unit Owner is hereby notified that each Unit Owner is obligated to provide any subsequent purchasers of that Unit Owner's Unit with copies of documents provided by Declarant to that Unit Owner before the Close of Escrow of that Unit Owner's Unit. These documents include, but are not limited to, (i) the Limited Warranty, (ii) any manufacturer's warranty information, (iii) any homeowner guide or applicable maintenance manual, (iv) any disclosures and supplemental disclosures, and (v) any other documents provided in conjunction with the original sale of the Unit by the Declarant. Each Owner shall maintain full and complete copies of all of the documents described above, and shall provide copies of said documents to any subsequent purchasers of Buyer's Unit. In accepting title to a Unit, subsequent purchasers are bound, and deemed to have agreed to be bound, by any and all such documents. Each Owner is obligated to provide to Declarant promptly at the time of the sale with the names of any subsequent purchaser of the Unit from Buyer for a period of ten (10) years from the date of the original close of escrow for such Owner's Unit.

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ARTICLE 11

GENERAL PROVISIONS

Section 11.1 **Severability.** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where the Development is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

Section 11.2 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Development and shall inure to the benefit of and shall be enforceable by the Association or any Unit Owner and 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 a majority of the voting power of the Association elects otherwise.

Section 11.3 **Amendments.**

(a) **Amendment by Declarant.**

(i) Notwithstanding any other provisions of this Section 11.3, at any time prior to the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

(ii) Notwithstanding any other provisions of this Section 11.3, Declarant (for so long as Declarant owns any portion of the Development) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of the Bureau of Real Estate or VA, FHA, Fannie Mae, Ginnie Mae, Freddie Mac, or other lender; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Development that have not been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under Division 2, Part 2, Title 7 of the California Civil Code (Section 895 et seq.); and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

(iii) Declarant shall have the right to amend the Map and Condominium Plan to reflect as-built conditions and/or to correct typographical, engineering or other errors in any previously recorded Condominium Plan, and such amendment, notwithstanding the provisions of Civil Code Section 4295, shall not require the consent of any Owner or Mortgagee.

(b) After the close of escrow for the first sale of a Condominium from Declarant to an individual Owner pursuant to a Public Report, and during such time as there is both Class A and Class B voting membership in the Association, this Declaration may be amended only by the vote or written consent of at least sixty-seven percent (67%) of the voting power of each of Class A Members and Class B Members and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration if approval of First Mortgagees is required pursuant to Article 8. After the conversion of Class B memberships into Class A memberships as provided in Section 3.6, this Declaration may be

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amended only by the vote or written consent of at least sixty-seven percent (67%)of the voting power of the voting Members of the Association as well as the vote or written consent of a majority of the total voting power of the voting Members other than Declarant and an appropriate percentage of Mortgagees of First Mortgages as set forth in Article 8 of this Declaration if approval of First Mortgagees is required pursuant to Article 8.

(c) Except for an amendment that may be unilaterally completed by Declarant as provided in Section 11.3(a): (i) a proposed amendment shall be distributed to all Unit Owners by first-class mail, personal delivery, electronic delivery (when agreed to in advance) or as otherwise permitted by Civil Code Sections 4040 through 4055 (as applicable), not less than thirty (30) days prior to the deadline for voting on the amendment by the Members of the Association, (ii) any such amendment shall be evidenced by an instrument executed and acknowledged by the President, Secretary or other duly authorized officer of the Association, shall make appropriate reference to this Declaration and its amendments and shall be recorded in the Official Records of the Recorder of the City and County of San Francisco, and (iii) any such voting of the Unit Owners regarding amendment of this Declaration shall comply with the applicable procedures in Civil Code Sections 5100-5130.

(d) A copy of an amendment adopted by the Members of the Association or completed by Declarant shall be delivered to the Unit Owners by first-class mail or personal delivery, or electronic delivery when agreed to in advance, within a reasonable period after its recordation.

(e) Notwithstanding the above in this Section 11.3: (i) the percentage of the voting power of the voting Members of the Association or of voting Members other than Declarant necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under such clause or provision, (ii) the Board shall have the power to amend this Declaration without an Association vote if the amendment is technical in nature or to make necessary factual corrections or changes required by law, (iii) any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not any other Owner shall not be amended or rescinded without the prior written consent of Declarant until all of the Units in the Development have been conveyed to an Owner pursuant to a Public Report and Declarant no longer owns any Units in the Development, and (iv) the provisions of Section 10.3 (Required Actions Prior to Certain Legal Actions or Proceedings), Section 10.4 (Title 7 Master Declaration; Disputes Involving Declarant; Design or Construction Defect Claims) and Section 11.4 (Limitation of Restrictions on Declarant) shall not be amended without the prior written approval of Declarant.

(f) Notwithstanding anything to the contrary in this Section 11.3, and notwithstanding anything to the contrary in this Declaration or the Governing Documents, any amendment to this Declaration or the Governing Documents that would materially affect the permitted use of a Commercial Unit, or that would otherwise materially and adversely affect any provision of this Declaration or the Governing Documents that specifically confers easement(s), rights or other benefits on a Commercial Unit Owner and not any other Owner, shall not be amended or rescinded without the prior written consent of the affected Commercial Unit Owner(s). Without limiting the generality of the foregoing, Sections 2.12, 6.3(a), 7.2, 7.27(m), and this paragraph shall not be amended or rescinded without the prior written consent of the Commercial Unit Owners.

(g) Amendment of the Condominium Plan. The Condominium Plan for the Development may be amended in compliance with Civil Code Section 4295, as such Civil Code Section may be amended. The Condominium Plan may be amended separately from this Declaration, in compliance Civil Code Section 4295. Conversion of Common Area into Exclusive Use Common Area without amendment of the Condominium Plan may be accomplished by the consent of Members holding a majority of the total voting power of the Association pursuant to Civil Code Section 4600, provided that

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any measure placed before the Unit Owners requesting that the Board of directors grant exclusive use of any portion of the Common Area shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area. The authorization of an encroachment into Common Area or the designation of Common Area as Exclusive Use Common Area under the provisions of Section 3.11 shall not be considered a conversion of Common Area into Common Area for purposes of this Section 11.3.

Section 11.4 Limitations of Restrictions on Declarant; Development Rights; Title Rights. Declarant is or may be undertaking the work of developing Condominiums and other improvements within the Development, which work may also include work on existing buildings and appurtenances within the Development. The completion of that work and the marketing, sale, rental or other disposal of the Condominiums is essential to the establishment and welfare of the Development as a condominium community. In order that said work may be accomplished and the Development be established as a fully occupied condominium community as rapidly as possible, and for a period of time terminating upon sale and close of escrow of the final Condominium Unit in the Development and Property owned by Declarant, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant or Declarant's contractors or subcontractors from performing on the Development or in any Unit whatever is reasonably necessary or advisable in connection with the completion of said work, including, without limitation, causing noise, dirt dust, odors, smells or other disturbances; in connection with any work, construction on any portion of the Property.

(b) Prevent Declarant or Declarant's contractors or subcontractors from using the driveways or entranceways from the public street, sidewalk, pathway, corridor or walkway to the Development in connection with the completion of any work on the Property.

(c) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Development such structures as may be reasonable or necessary for the conduct of its business of completing said work and establishing said Development as a community and disposing of the Condominiums by sale, lease or otherwise.

(d) Prevent Declarant from conducting on any part of the Development its business of completing said work and of establishing a plan of condominium ownership and of disposing of said Development by sale or leasing of Condominiums or otherwise, including use of a Unit, multiple Units or amenity areas, roof areas, lobbies, or other portion of the Common Area as a sales or leasing office or other buyer or resident service purpose.

(e) Prevent Declarant from sales and marketing activities as may be deemed necessary by Declarant for the marketing of the Condominiums for sale or leasing, including, without limitation, tours of the Common Area and unoccupied Units by potential buyers, lessees and their agents.

(f) Prevent Declarant from maintaining such sign or signs on any part of the Development as may be necessary for the sales, marketing, leasing, or disposition of the Development by sale or leasing of Condominiums or otherwise.

(g) Subject Declarant to the Architectural Control provisions of this Declaration for the construction of any Condominium or other improvement on the Development.

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(h) Prevent Declarant from changing the exterior appearance of Common Areas structures, landscaping or any other matter directly or indirectly connected with the Development in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

(i) Declarant and Declarant's successors and assigns may use any portion of the Common Area and/or a Unit(s) owned by Declarant for a model Unit, design center, customer service center or display and sales or leasing office which promotes the Development until the last unit is sold or leased.

(j) Subject to the foregoing, so long as Declarant or Declarant's successors and assigns owns one or more of the Condominiums established and described herein, Declarant and its successors and assigns shall otherwise be subject to the provisions of this Declaration. The provisions of this Section 11.4 may not be amended without the consent of Declarant until three (3) years after all of the Condominiums in the Development owned by Declarant have been conveyed to an unrelated third party.

(k) **Title Rights**. The rights of Declarant may be assigned to any successor(s) by an express assignment in a recorded instrument, including, without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations, easements and rights of way to itself, utility companies, to government agencies, or to others as may be reasonably necessary to the proper development, marketing, sale, leasing and disposal of property owned by Declarant.

(l) **Supplementary Declaration**. So long as Declarant owns any portion of the Property, a Supplementary Declaration may be recorded by Declarant without the consent of the Association or any Owner, for any of the purposes for which a Supplementary Declaration may be recorded as provided herein this Declaration.

Section 11.5 **Termination of any Responsibility of Declarant.** In the event Declarant conveys its rights, title and interest in and to the Development to any individual, partnership, limited liability company, corporation or other legal entity and causes a "Notice of Substitution of Declarant" setting forth the name and business address of such individual, partnership, limited liability company, corporation or other legal entity and a reference to this Declaration to be recorded in the Official Records of the City and County of San Francisco, Declarant shall be relieved of any further duty or obligation hereunder and such individual, partnership, limited liability company, corporation or other legal entity shall accept all such duties and obligations of Declarant on and after the date of recordation of such "Notice of Substitution of Declarant" and shall be entitled to exercise the rights available to Declarant hereunder.

Section 11.6 **Enforcement of Obligation to Complete Improvements.** In the event that the Common Area of the Development has not been completed prior to the issuance of a final subdivision public report by the BRE, then Declarant shall enter into written agreements satisfactory to the BRE to secure the completion of such improvements. The Board shall consider and vote upon action by the Association to enforce the rights provided to the Association by such agreements if, within sixty (60) days after the completion date specified for a particular improvement by such agreement, no notice of completion as to such improvement has been filed and such improvement is not complete. If the Association has given an extension in writing for the completion of any Common Area, the Board shall consider and vote upon action if a notice of completion has not been filed within thirty (30) days after the expiration of such extension.

A special meeting of the Members of the Association, for the purpose of voting to override a decision by the Board not to initiate action to enforce the rights of the Association under the

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aforementioned agreements or on the failure of the Board to consider and vote upon action, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after the receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of voting Members of the Association. At such special meeting, a vote of a majority of the Members of the Association other than the Declarant shall be required to take action to enforce the rights of the Association under such agreements and such vote shall be deemed to be the decision of the Association. The Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

Section 11.7 Inspection of Improvements and Release of Completion Arrangements. The Board shall, within thirty (30) days of Declarant's providing the Board with a copy of the recorded notice of completion with respect to the improvements referred to in Section 11.6 above or otherwise notifying the Board that the improvements are complete, cause such improvements to be inspected in the manner determined by the Board to be appropriate under the circumstances. The Board shall notify Declarant within thirty (30) days of Declarant's notice whether such improvements have been satisfactorily completed or if the Board's position is that there are remaining items to be constructed or repaired. If (a) either the Board confirms that such improvements are complete, or the Board fails to notify Declarant of any remaining items to be constructed or repaired, and (b) either (i) the statutory period for recording mechanics' liens has expired, or (ii) the Association has been provided with a title policy or endorsement, as applicable, with coverage in an amount not less than the cost of the improvements, insuring that the improvements are free of liens and claims, then Declarant shall be entitled to the release of any bonds, letters of credit or other security held by the Association with respect to such improvements, and the Board shall cooperate with Declarant respect to such release.

Section 11.8 Unit Owner's Compliance. Each Unit Owner of a Unit and/or occupant of a Unit shall comply with the provisions of the Governing Documents and the decisions and resolutions of the Association or its duly authorized representative as such may be lawfully amended from time to time and failure to comply with any such provisions, decisions or resolutions shall be grounds for action to recover sums due for damages or for injunctive relief. All arrangements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Unit Owners of Units and their successors and assigns.

Section 11.9 Joint and Severable Liability. When the Owner of a Unit is comprised or more than one person, each such person shall be jointly and severally liable for payment of Assessments, and the performance of all obligations arising under any provision of the Governing Documents with respect to such Unit or the ownership thereof.

Section 11.10 Conflict. In the case of any conflict or inconsistencies between the Articles and Bylaws and this Declaration, this Declaration shall control.

Section 11.11 Use of Words. Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns have been used herein in their generic sense as a reference to all Persons without regard to sex. The use of the word "including" does not limit the possible examples of the matter discussed.

Section 11.12 Statutory References. All references in this Declaration to particular statutes or codes are references to the laws of the State of California or United States and should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made. If a statute is repealed and

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no replacement statute applies, then the requirement of the prior statute shall apply unless amended by the Association.

Section 11.13 Notices. Any notice permitted or required by this Declaration, the Articles or the Bylaws may be delivered by either personally or by mail, or as otherwise permitted by Civil Code Sections 4040 through 4055, as applicable. If delivered by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Person at the current address given by such Person to the Secretary of the Association or addressed to the Unit of such Person if no address has been given to the Secretary.

Section 11.14 Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference.

Section 11.15 No Discrimination. Notwithstanding anything that may be stated herein, no provision of this Declaration shall purport to restrict or abridge, directly or indirectly, the right of a Unit Owner to sell or lease his Unit because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, family status, or other limitation prohibited by law, of a proposed or actual buyer or occupant.

Section 11.16 Power of Attorney.

(a) Each of the Unit Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Unit Owner to sell the entire Development and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Unit Owners when partition of the Development may be had under Civil Code Section 4610 and under the circumstances authorizing partition under this Declaration. This power of attorney shall (i) be binding on all Unit Owners whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Association subject to obtaining the prior approval by vote or written consent of sixty-seven percent (67%) of all Mortgagees of First Mortgages; and (iii) be exercisable only after recordation in the Official Records of the Recorder of the City and County of San Francisco of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any Person relying on in it good faith.

(b) Each Owner, by accepting and recording a grant deed to a Unit in the Development, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Property, as Owner's attorney-in-fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, Occupants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successor and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney in fact to prepare, execute, acknowledge and record any amendment to or restatement of a Condominium Plan, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any city, county, state or federal laws or regulations. The acceptance or creation or any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described in this Section.

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Section 11.17 Special Tax Assessment; Mello-Roos Community Facilities District; Community Benefit District. The Development may lie within the boundaries of a special tax assessment district, Mello-Roos Community Facilities District and a Community Benefit District that require the levy of special taxes or assessments for repayment of bonds issued for the purpose of paying the cost of services or capital improvements, or for payment of community facilities or benefits. Unit Owner's and/or the Association may be required to pay such special taxes and assessments. The amount of the special taxes, assessments and any other information pertaining to any such district(s) can be obtained from the San Francisco Assessor's Office.

Section 11.18 Limit of Liability of Declarant Parties. To the greatest extent allowed by law, the liability of Declarant for Declarant's obligations under this Declaration (or any amendments or supplements thereto) shall be limited to Declarant's interest in the Property, and no Owner, Occupant or the Association shall look to any other property or assets of Declarant, or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, agent or affiliate of Declarant (collectively, the "Declarant Parties") in seeking either to enforce Declarant's obligations under this Declaration (or any amendments or supplements thereto) to satisfy a judgment for Declarant's failure to perform such obligations; and none of the Declarant Parties shall be personally liable for the performance of Declarant's obligations under this Declaration (or any amendments or supplements thereto).

Section 11.19 Natural Hazard Zone.

(a) **Earthquakes**. California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Declarant has been advised that the Development is not located in an Earthquake Fault Zone as defined in the Alquist-Priolo Earthquake Fault Zoning Act (California Public Resources Code Section 2621 et seq.). Unit Owners must evaluate the potential for future seismic activity that might seriously damage the Unit Owner's Unit. Although the Development is not located in a designated Earthquake Fault Zone, a major earthquake could cause very serious damage to the Development and the Units, even if the epicenter of the earthquake is many miles from the Development. A more moderate earthquake occurring on a minor fault, or on an undiscovered fault, could also cause serious damage to the Development and the Units.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Development. Please read "The Homeowner's Guide to Earthquake Safety" published by the California Seismic Safety Commission, and consult with the City, other public agencies, and appropriate experts to evaluate the potential risk.

(b) **Seismic Hazard Zone.** Many portions of Northern California are subject to risks associated with seismic activity or earthquakes. Declarant has been informed that the Development is not located within a Seismic Hazard Zone. A Seismic Hazard Zone is defined in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690 et seq.) and shown on Maps that are released by the California Department of Conservation, Division of Mines and Geology. Copies of these maps are on file with the City. There are two types of Seismic Hazard Zones: a landslide zone and a liquefaction zone. "Liquefaction" is the process by which water-saturated soils become unstable under heavy shaking and thereby jeopardize foundations and other structures. Declarant makes no representations or warranties as to the degree of liquefaction risk within the Development. Please consult with the City, other public agencies and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety" published by the California Seismic Safety Commission.

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[signature(s) on following page]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has issued this Declaration as of the day and year written below. .

PACIFIC PINE LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Agent

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NOTARY ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California)SS
COUNTY OF San Francisco)

On October 11, 2017

before me, Mihaela Muntean, a Notary Public, personally appeared Joyce Yonce

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 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 of Notary Public

MIHAELA MUNTEAN
Commission # 2096171
Notary Public - California
Contra Costa County
My Comm. Expires Feb 4, 2019

(Notary Seal)

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EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

All that certain real property described on that certain subdivision map entitled "Final Map No. 8883", recorded on September 13, 2017, in Condominium Map Book 132, at Pages 144 through 146, inclusive, in the Official Records of the City and County of San Francisco, State of California.

APNs: 0667-047 through 0667-149

Formerly APNs: 0667-016, 017, 018, 018-A & 019

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EXHIBIT B

PERCENTAGES FOR PRORATION OF GENERAL AND RESIDENTIAL ASSESSMENTS

(See Section 4.8 of the Declaration)

Unit Number		General Assessment Interest	Residential Assessment Interest
101	1,167	0.01381	0.00000
108	686	0.00812	0.00000
109	709	0.00839	0.00000
201	581	0.00688	0.00709
202	423	0.00501	0.00516
203	1,101	0.01303	0.01344
204	630	0.00746	0.00769
205	637	0.00754	0.00778
206	1,165	0.01379	0.01422
207	442	0.00523	0.00540
208	619	0.00733	0.00756
209	1,398	0.01655	0.01707
210	537	0.00636	0.00656
211	696	0.00824	0.00850
301	581	0.00688	0.00709

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Unit Number	General Assessment Interest	Residential Assessment Interest
302	0.00500	0.00515
303	0.01339	0.01381
304	0.00746	0.00769
305	0.00754	0.00778
306	0.01418	0.01462
307	0.00522	0.00538
308	0.00733	0.00756
309	0.01658	0.01710
310	0.00634	0.00654
311	0.00674	0.00695
312	0.00857	0.00884
401	0.00688	0.00709
402	0.00501	0.00516
403	0.01339	0.01381
404	0.00746	0.00769
405	0.00754	0.00778
406	0.01174	0.01211
407	0.00523	0.00540
408	0.00733	0.00756
409	0.01657	0.01709
410	0.00634	0.00654
411	0.00675	0.00696
412	0.00857	0.00884
501	0.00688	0.00709
502	0.00501	0.00516
503	0.01339	0.01381
504	0.00746	0.00769
505	0.00754	0.00778
506	0.01173	0.01210
507	0.00511	0.00527
508	0.00733	0.00756
509	0.00954	0.00984

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Unit Number	General Assessment Interest	Residential Assessment Interest
510	0.00714	0.00736
511	0.00758	0.00781
512	0.01014	0.01046
601	0.00688	0.00709
602	0.00501	0.00516
603	0.01339	0.01381
604	0.00746	0.00769
605	0.00754	0.00778
606	0.01412	0.01456
607	0.00733	0.00756
608	0.00953	0.00983
609	0.00714	0.00736
610	0.00758	0.00781
611	0.01014	0.01046
701	0.01268	0.01307
702	0.00877	0.00905
703	0.00872	0.00900
704	0.01351	0.01393
705	0.01371	0.01414
706	0.00741	0.00764
707	0.01340	0.01382
801	0.01270	0.01310
802	0.00878	0.00906
803	0.00874	0.00901
804	0.01349	0.01392
805	0.01370	0.01412
806	0.00741	0.00764
807	0.01340	0.01382
901	0.01269	0.01309
902	0.00878	0.00906
903	0.00872	0.00900
904	0.01349	0.01392

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Unit Number	General Assessment Interest	Residential Assessment Interest
905	0.01372	0.01415
906	0.00741	0.00764
907	0.01339	0.01381
1001	0.01269	0.01309
1002	0.00878	0.00906
1003	0.00872	0.00900
1004	0.01351	0.01393
1005	0.01373	0.01416
1006	0.00741	0.00764
1007	0.01339	0.01381
1101	0.01270	0.01310
1102	0.00877	0.00905
1103	0.00872	0.00900
1104	0.01351	0.01393
1105	0.01371	0.01414
1106	0.00741	0.00764
1107	0.01340	0.01382
1201	0.01271	0.01311
1202	0.00878	0.00906
1203	0.00872	0.00900
1204	0.01349	0.01392
1205	0.01371	0.01414
1206	0.00741	0.00764
1207	0.01340	0.01382
TOTAL	**1.000000**	**1.00000**

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EXHIBIT C

LIMITED WARRANTY
FOR
THE AUSTIN

This Limited Warranty is attached to the Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium Ownership of The Austin, a Condominium Project (the "Declaration") in accordance with Section 10.4 of the Declaration.

NOTICE OF BINDING ARBITRATION AND JUDICIAL REFERENCE:
THIS LIMITED WARRANTY CONTAINS BINDING ARBITRATION PROVISIONS UNDER THE FEDERAL ARBITRATION ACT AND JUDICIAL REFERENCE PROVISIONS. BINDING ARBITRATION AND JUDICIAL REFERENCE INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE ARBITRATION AND JUDICIAL REFERENCE PROVISIONS CAREFULLY AND CONSULT WITH LEGAL COUNSEL WITH ANY QUESTIONS.

FROM: Pacific Pine LLC, a Delaware limited liability company (**"Seller"** or **"Declarant"**)

TO: The Austin Owners Association (referred to in this Limited Warranty as "you", "your" or "Association") with respect to the Common Area and Common Area iinprovements the Association is responsible to maintain and repair; and

Each Owner of a Residential Condominium Unit in the Project (referred to in this Limited Warranty as **"you"**, **"your"**, **"owner"** or **"Buyer"**) with respect to the Residential Condominium Units

PROJECT: The Austin, San Francisco, California (**"Project"**)

UNIT OWNERS. Each owner's Unit will require proper maintenance and care by the Unit owner. Maintenance is necessary for many reasons, including normal wear and tear, fluctuation in temperature, the inherent characteristics of the materials used in constructing the Unit, and service required by the mechanical and other systems in the Unit. As you enjoy your new home, remember – a minor adjustment or repair performed in a timely manner can save a more serious, time-consuming and often costly repair later. **Under the terms of this Limited Warranty, each owner of a Unit must provide all commonly accepted, reasonable and necessary maintenance to such owner's Unit, including any such maintenance procedures outlined in any owner's manual(s) or maintenance guide(s) that may be provided to such Owner by Seller or the Association, and as required by the Declaration and other project documentation.**

ASSOCIATION. The Project in which the Units are located includes Common Area, such as lobby areas, roof areas, walkways, roadways, courtyards, parking areas, pathways, garages, basements, decks, exterior surfaces, landscaping, and building infrastructure and structural components, as further defined in the Declaration recorded as to the Unit and the Project (**"Common Area"**), which also require maintenance and repair. The Austin Owners Association (**"Association"**) formed for the Project is, among other things, responsible for the care and maintenance of the Common Area and Common Area improvements. **Under the terms of this Limited Warranty, the Association must provide any and all**

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commonly accepted, reasonable and necessary maintenance to the Common Area of the Project and related Common Area improvements, inclnding without limitation, as set forth in any maintenance manual(s) or maintenance guide(s) for the Project that may be provided to the Association by Seller, and as required by the Declaration and other project documentation.

You must complete and mail any registration cards included with any manufacturer's products and/or materials which Seller provides in order to activate any manufacturer warranties. In some cases, manufacturer warranties may extend beyond the Limited Warranty. You are advised to read the information provided by any manufacturers of consumer products and other items in Buyer's Unit and/or the Common Area, including the maintenance requirements and recommendations for such products. Information contained in such manufacturer materials is not repeated in this Limited Warranty.

NOTE: For your convenience, **and except for emergencies,** we suggest Buyer wait at least thirty (30) days from purchasing your Unit before requesting service under this Limited Warranty. This will give you an opportunity to become settled in your Unit and to become familiar with its components. Creating a list, rather than reporting issues individually, will minimize the number of visits to your Unit. **However, if an item will worsen without immediate attention, or if there is an emergency, immediate steps must be taken. Items that need immediate attention must be reported right away.**

NOTE: CONDITIONS INVOLVING WATER DAMAGE OR LEAKS. ANY AND ALL CONDITIONS WITHIN THE UNIT OR COMMON AREA WHICH INVOLVE WATER DAMAGE, OR THE POTENTIAL FOR WATER DAMAGE, SUCH AS A PLUMBING LEAK OR BREAK, OR ROOF, OR WINDOW LEAK, ARE EMERGENCIES. YOU HEREBY AGREE TO NOTIFY THE PROPERTY MANAGER IMMEDIATELY BY TELEPHONE AS TO ALL SUCH CONDITIONS. UPON DISCOVERY OF ANY SUCH EMERGENCY CONDITION, YOU ALSO AGREE TO ALLOW SELLER IMMEDIATE ACCESS TO THE UNIT AND/OR COMMON AREA IN ORDER TO INSPECT AND/OR TEST AND TO TAKE ALL STEPS SELLER DEEMS NECESSARY TO REPAIR ANY SUCH CONDITION, AS WELL AS TO REMOVE AND/OR REPLACE ANY AND ALL COMPONENTS OR MATERIALS CAUSING DAMAGE, OR DAMAGED BY SUCH CONDITION, INCLUDING WITHOUT LIMITATION, REMOVAL OF WET DRYWALL, SHEETROCK, TRIM, CARPET, CARPET PAD AND FLOORING MATERIAL. SELLER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO INSPECT AND REPAIR, OR CAUSE TO BE INSPECTED AND REPAIRED AS DESCRIBED ABOVE, ANY CONDITIONS IN ANY UNIT OR THE COMMON AREA WHICH LEAK OR COULD LEAK AND CAUSE WATER DAMAGE TO ANY UNIT OR THE COMMON AREA.

I. LIMITED WARRANTY COVERAGE; COMMENCEMENT DATE.

A. Unit Owners; Buyer(s). This Limited Warranty provides coverage to (i) you, the original party (referred to in the Limited Warranty as "**you**", "**your**", "**owner**" or "**Buyer**") who purchased the Unit from Seller as shown on the grant deed for the Unit, and (ii) subsequent purchasers and Unit owners as provided in Section VII below, with respect to each Buyer's or owner's condominium Unit. Coverage for the Unit under this Limited Warranty begins ("**Commencement Date**") at the close of escrow for the sale of the Unit to the original purchaser from Seller.

B. Association. This Limited Warranty also provides coverage to the Association identified in the Declaration (referred to in the Limited Warranty as "**you**", "**your**" or "**Association**") with respect to the Common Area (defined in the Declaration) and Common Area improvements for which the Association is responsible to maintain and repair. For the Association and Common Area and Common Area improvements, the date of the first close of escrow for the sale of a condominium unit in the Project from Seller is the "**Commencement Date**" for coverage under this Limited Warranty.

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ONE YEAR FIT & FINISH WARRANTY. This Section II constitutes a one (1) year express limited warranty covering the Fit and Finish of certain building components and is intended to comply with Civil Code Section 900 (the "**Fit and Finish Warranty**").

A. Term. The term of this Fit and Finish Warranty shall be for a period of one (1) year commencing with the applicable Commencement Date defined above (the "**Fit and Finish Warranty Period**"). Coverage under this Fit and Finish Warranty shall not be extended for subsequent purchasers.

B. Covered Components. With respect to the Buyer, this Fit and Finish Warranty covers the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim within your Unit ("**Covered Components**"). With respect to the Association, this Fit and Finish Warranty includes the Covered Components (if any) as may be located within the Common Area of the Project. This Fit and Finish Warranty shall not apply to installations, materials, products and any related construction, service or installation work performed by any third party contracted by Buyer or the Association. This Fit and Finish Warranty shall not apply to damage to the Covered Components caused by defects in other elements governed by other provisions of Title 7 of Chapter 2 of Part 2 of the Civil Code.

C. Scope of Fit and Finish Warranty. Items covered by this Fit and Finish Warranty are defects and deficiencies in materials and workmanship of Covered Components that do not meet the generally accepted Standards for the Covered Components. Minor imperfections of finishes (natural or synthetic) which do not materially detract from the appearance of the finish as a whole, or whose existence remains a matter of subjective judgment are not covered by this Fit and Finish Warranty. The following are specific items that are covered by this Fit and Finish Warranty, except expressly limited as stated:

1. **Visible Surface Defects.** Visible surface defects that are material defects in finished surfaces, evident upon examination are covered by this Fit and Finish Warranty if noted on the Punch List defined in subparagraph II. E below. Examples are chipped, scratched, cracked or broken windows, mirrors or shower doors; chipped or scratched appliances, bathtubs or washbowls; scratched, gouged or scuffed flooring; stained or dirty carpeting; stained, scratched, gouged or dented walls, ceilings, doors or trim. Visible surface defects not noted on the Punch List are deemed to have occurred after transfer of title and are not covered by this Fit and Finish Warranty.

2. **Lumber, Millwork and Drywall.** Material defects and deficiencies in wood components are covered by this Fit and Finish Warranty. Minor shrinkage and expansion of wood components or movement is to be expected and does not constitute a defect in material or workmanship and is therefore not covered by this Limited Warranty. Some shrinkage of wood in the joists, studs and other framing components in your Unit is inevitable, and consequently some moldings or trim may shift from their original position, joints in the woodwork may open, doors may warp, and cracks may appear in drywall. Wood will shrink as it dries and as it loses moisture and swells as it absorbs moisture. This characteristic of wood may cause joints in millwork to develop separations or gaps as a result of seasonal changes. These gaps, separations, and cracks are normal and are not covered under this Limited Warranty.

3. **Interior Doors.** Interior doors with more than one half (1/2) inch of warp are considered defective and will be repaired or replaced, provided written notice has been given to Seller during the Fit and Finish Warranty Period.

4. **Hardware/Door Operations.** Operation of hardware for doors is covered by this Fit and Finish Warranty if defects are noted on the Punch List. Due to normal use, door hardware may require readjustment over a period of time. This adjustment is not covered by the Fit and Finish Warranty. Proper operation of all hardware should be determined by the Buyer during its inspection of

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the Unit and any defects noted in the Punch List.

5. Cabinetry. Operation of cabinetry and hardware for drawers and cabinets doors is covered by this Fit and Finish Warranty if defects are noted on the Punch List. Cabinet drawers and hardware are subject to misalignment through use over a period of time. Readjustment of the cabinetry and cabinetry hardware is not covered by this Fit and Finish Warranty. If there are any hardware malfunctions, they should be noted at the time of the Punch List. Natural wood finishes change color with age and may fade or darken with time and exposure to sun; such changes are not covered by this Fit and Finish Warranty. As described in Section II.C.1. above, any visible surface defects in cabinetry that are not noted on the Punch List are deemed to have occurred after transfer of title and are not covered by this Fit and Finish Warranty.

6. Floors. This Fit and Finish Warranty covers extreme nail or seam popping, cracked or loose tile or imperfections in the sub flooring that occur during the Fit and Finish Warranty Period. This Fit and Finish Warranty further covers scratches, gouges, heel marks and other visible surface defects, provided they are noted in the Punch List. Because shade, feel, and color will vary within each production run of a manufacturer's carpet, tile, marble and wood floors, and may also vary as a result of use, cleaning and waxing, Seller cannot assure color match in case repair or replacement of these items is required. Natural wood finishes change color with age and may fade or darken with time and exposure to sun, such changes are not covered by this Fit and Finish Warranty. As described in Section II.C.1. above, any visible surface defects in the floors that are not noted on the Punch List are deemed to have occurred after transfer of title and are not covered by this Fit and Finish Warranty.

7. Countertops. Significant scratches are covered by this Fit and Finish Warranty provided they are noted on the Punch List. Vanities and countertops are guaranteed against defects in workmanship and material during the Fit and Finish Warranty Period. They are not guaranteed against burns or damage from frozen foods, stains from use or other improper usage. As described in Section II.C.1. above, any visible surface defects in countertops that are not noted on the Punch List are deemed to have occurred after transfer of title and are not covered by this Fit and Finish Warranty

8. Paint. The paint used inside and outside your Unit is of a type and quality appropriate to its use, and its application is warranted to be consistent with accepted standards. This Fit and Finish Warranty covers blistering, peeling or flaking during the Fit and Finish Warranty Period. It also covers serious smudges, stains or other soiling, provided they are noted on the Punch List. If touch-up painting is noted on the Punch List and is required, Seller cannot warrant a perfect match between touch-up paint and existing paint. Paint will gradually change color with time, as no paint is completely color stable when exposed to light, air and varying temperature and humidity. Seller does not warrant against such color change. Regular care of painted surfaces and avoidance of damage will prolong the life of painted surfaces. As described in Section II.C.1. above, any visible surface defects in paint that are not noted on the Punch List are deemed to have occurred after transfer of title and are not covered by this Fit and Finish Warranty.

9. Fire, Alarm, or Other Life Safety or Security Systems. With respect to any fire, alarm, or other life safety or security system installed in or servicing the Project or the Unit, Seller's liability under this Limited Warranty shall be limited to the cost of correcting any defective workmanship or replacing any defective materials in such systems.

D. Cosmetic Deficiencies; Punch List Items; Exclusions from Coverage. Subject to any applicable tolerances set forth in this Fit and Finish Warranty, the following conditions are cosmetic and are NOT covered by this Fit and Finish Warranty. Such condition(s) may be addressed by Seller only if included on a Punch List prepared by Buyer and submitted to Seller prior to the close of escrow; provided, that Seller shall have no obligation to perform any corrective work noted on Buyer's Punch List

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unless agreed to by Seller in writing.

1. Broken, inoperable, or scratched glass, light fixtures, light bulbs, or mirrors;
2. Chipped or cracked porcelain, tile, natural stone (including granite and marble), grout, or fiberglass. Scratches, crazing, or fissures are a natural part of certain materials. Natural stone will not be replaced unless there is severe damage caused by unnatural circumstances;
3. Chipped or scratched surfaces of appliances or plumbing fixtures;
4. Concrete cracks occurring at a cold or control joint;
5. Cracked or loose porcelain or tile;
6. Damaged, or missing window or door screens, or door locks or windows that do not operate;
7. Insect infestation (termites, ants, spiders, bees) or animals;
8. Paint splatters, or blotches, or concrete splatters, and stucco or drywall splatters;
9. Scratches on windows that are readily visible only from a distance of 11 feet or greater under normal lighting conditions;
10. Scratched or scuffed floor tiles, floor coverings, wall coverings, wood trim, painted surfaces, or countertops;
11. Scratched or stained cabinet surfaces or finishes;
12. Surface damage to stucco, concrete, or cracks in driveways, sidewalks, or patio slabs exceeding tolerances as defined in this Warranty;
13 Stains or spots on floor coverings;
14. Wall or trim surfaces visible through paint; and
15. Minor, nonstructural cracks in concrete.

E. Buyer's Inspection and Walk-Through; Punch List. As further described in the Agreement, before the close of escrow, a representative of Seller will meet with Buyer at the Unit to perform a walk-through and inspection of the Unit (the "**Walk-Through**"). Buyer and a representative of Seller together will inspect the Unit and will make note of any potential corrective work; provided, that Seller shall have no obligation to perform any corrective work unless agreed to by Seller in writing. A walk-through of the Common Area may occur; however, the Common Area is the responsibility of the Association. Immediately after the Walk-Through Buyer shall complete and sign a list ("**Punch List**") noting any potential corrective work that may be addressed by Seller. If Buyer fails to attend a Walk-Through, or if Buyer fails to complete and sign any Punch List after the Walk-Through, then Buyer shall be deemed to have approved all aspects of the Unit and the Project and to have acknowledged and agreed that Seller has performed all of Seller's obligations to Buyer under the terms of this Agreement concerning the Unit and Project as a whole. Buyer is referred to the Agreement for further detail concerning Buyer's inspection and Walk-Through of the Unit and Buyer's and Seller's obligations related thereto.

F. Notice to Seller of Deficiency and Requests for Service/Claims Under Fit & Finish Warranty. All notices of deficiencies regarding Covered Components under this Fit and Finish Warranty, and all claims and/or requests for service regarding Covered Components under this Fit and Finish Warranty shall be made by written notice to Seller as provided in Section VIII of this Limited Warranty. All notices of deficiencies regarding manufactured items or appliances, and all claims and/or requests for service regarding manufactured items or appliances, shall be made by written notice directly to the manufacturer of such manufactured item or appliance, and not to Seller. You are referred to Section V of this Limited Warranty for further detail concerning manufactured items or appliances.

G. Seller's Obligation to Repair or Replace. Seller will repair or replace, at its option, and at no charge, any Covered Component of the Unit found to be defective under the terms and definitions of this Fit and Finish Warranty during the term of coverage. Seller shall make said repairs or complete said

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replacements as soon as practicable, and without any unreasonable delay. All repairs and replacements will be made at no charge to Buyer. Any repair or replacement of a Covered Component that may be performed by Seller shall not extend the Fit and Finish Warranty Period for any such item repaired or replaced; the term this Fit and Finish Warranty with respect to any repair or replacement performed by Seller shall remain at a period of one (1) year from the Commencement Date.

H. Access. Buyer must allow Seller reasonable access to the Unit to inspect and to remedy the defect. The failure or the refusal of Buyer to allow Seller reasonable access to inspect or complete warranty work will entitle Seller to declare the Warranty void and of no further force or effect with respect to that defect. Buyer must be present at time of completion of repair work to inspect and accept warranty repairs. The failure to do so will result in an assumed acceptance, and purchaser relinquishes the right to request additional warranty work on that defect.

III. FUNCTIONALITY STANDARDS. In compliance with Civil Code Section 896, Seller affirms that, during the term of coverage for the Functionality Standards described in Section III.A below, the components of the Unit, and to the extent applicable the components of the Common Area, shall meet and comply with the standards and the terms set forth in Title 7, Chapter 2, Civil Code Section 896(a)-(g) (the "Functionality Standards"), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference. **This is not intended to constitute an Enhanced Protection Agreement under Civil Code Sections 901-906**. This Limited Warranty does not apply to any actions seeking recovery solely for defects in a manufactured product (as that term is defined in Civil Code Section 896) located within the Project, but does apply to installation of manufactured products if done in such a way so as to interfere with the utility or useful life of the product (as defined in Civil Code Section 896(2)(B)).

A. Term of Coverage for Functionality Standards. The term of coverage for the Functionality Standards under this Limited Warranty with respect to the Common Area shall commence on substantial completion of the Project as evidenced by the first to occur of the following: (1) occupancy of any condominium unit in the Project, or (2) the date of recordation of a valid notice of completion. The term of coverage for the Functionality Standards under this Limited Warranty with respect to the components of a Unit that are covered by the Functionality Standards shall commence on the date of the close of escrow for the purchase of the Unit between Seller and the original buyer of the Unit. The term of coverage for the Functionality Standards under this Limited Warranty shall terminate as provided in Civil Code Section 896. Pursuant to Civil Code Section 896, different components of the Units or Project have different terms during which the Functionality Standards for such component(s) apply. Reference is made to Section 896(a)-(g) and other provisions of Title 7 for further detail concerning the term of coverage for the Functionality Standards. Notwithstanding the foregoing, the term of coverage for the Functionality Standards shall be limited as described in Civil Code Section 941. In no event shall the Functionality Standards apply to any component of the Unit or Project after ten (10) years from the date of substantial completion of such component of the Unit or Project.

B. Notice to Seller of Deficiency and Requests for Service/Claims Related to Functionality Standards. All notices of deficiencies regarding the Functionality Standards under this Limited Warranty, and all claims and/or requests for service of the Functionality Standards under this Limited Warranty shall be made by written notice to Seller as provided in Section VIII of this Limited Warranty. All notices of deficiencies regarding manufactured items or appliances, and all claims and/or requests for service regarding manufactured items or appliances, shall be made by written notice directly to the manufacturer of such manufactured item or appliance, and not to Seller. You are referred to Section V of this Limited Warranty for further detail concerning manufactured items or appliances.

IV. EXCLUDED ITEMS. This Limited Warranty does not cover the following items or conditions:

A. Damage or loss arising out of or made worse by ordinary wear and tear.

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B. Lack of owner and/or Association maintenance, including without limitation, owner's or Association's failure to perform maintenance, including without limitation, (i) any maintenance requirements or guidelines described in any maintenance manual(s) provided to owner or the Association by Seller, (ii) product manufacturer suggested or required maintenance, and (iii) maintenance that would commonly be performed by a reasonable owner or Association.

C. Damage or loss normally covered by a standard homeowner's insurance policy (with respect to the Units), or owner's association insurance policy (with respect to the Common Area).

D. Damage or loss caused by natural catastrophes, acts of nature, or acts of God, including, without limitation, freezing, ice buildup, buildup of leaves, debris or animal droppings, fire, smoke, explosion, water escape, flood, wind, wind-driven rain, hail, lightning, earthquake, earth movement, and falling trees, or power surges, or other similar circumstances outside of Seller's control. Without limiting the foregoing, Seller does not warrant that air infiltration or drafts around doors, windows and electrical outlets, especially during severe weather and high winds, will be eliminated; nor does this Warranty cover the failure of windows to perform, or leaks due to wind driven rain, or clogged weep holes or tracks.

E. Damage or loss caused by abuse of the Unit or Common Area, or use of the Unit or Common Area in a manner for which they are not intended, including without limitation failure to use the sprinkler system properly (resulting in over or under watering), or damage to driveways or other flatwork caused by trucks, heavy machinery, or other loads.

F. Damage resulting from or made worse by owner's or Association's failure to take appropriate action to prevent further damage, including without limitation the failure to notify Seller promptly of any damage so as to avoid worsening of damage, after owner or Association discovered or should have discovered it, or failure to notify Seller of and take reasonable action relating to any emergency.

G. Damage or loss to the Unit or Common Area caused by owner, or any party other than Seller (including, without limitation, accidental damage and damage during move-in).

H. Damage or loss caused by animals, birds, vermin, rodents, insects (including termites) or pets, or by any guest, tenant or invitee of owner or Association (including, without limitation, vandalism).

I. Damage resulting from any change to the grading or drainage pattern of the Common Area.

J. Damage or loss caused by materials furnished, or any work or alterations performed, by anyone other than Seller.

K. Any part of the Unit or Common Area, structural or otherwise, that is modified by or added to in any way, including attempted repair, by anyone other than Seller, is excluded from this Warranty. Any modification or addition performed by anyone other than Seller that adversely affects any warranted item will void the Warranty for that item.

L. Nonstructural cracks equal to or less than 1/8 inch in width in masonry walls and veneers and nonstructural cracks in concrete that has floor covering or in ceilings without covering. Such cracks are not unusual and frequently occur due to normal settling.

M. Nonstructural cracks equal to or less than 3/8 inch in width or 1/4 inch in vertical displacement in concrete that does not have floor covering (i.e., garage floors, patios, walkways and driveways). Such cracks are not unusual and frequently occur due to normal settling.

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N. Cracks equal to or less than 1/8 inch in width in stucco.

O. Cracks equal to or less than 1/8 inch in drywall.

P. Cracks in ceramic tile, grouting of ceramic tile joints or at junctions with other materials, such as a bathtub.

Q. Wood cracks or minor openings of wooden joints such as in panel doors, mitered casings and solid paneling, and interior drywall cracks around windows and sills. Such cracks and openings are generally caused by normal shrinkage during the drying out process of the wood and may be mitigated with proper maintenance, including caulking.

R. Fading, chalking, chipping, or flaking of outside paint or other exterior finishes caused by the sun, soil, or weather. Please note that in the event Seller elects at Seller's discretion to perform any paint repairs or patching, owner recognizes that Seller cannot guarantee that the new paint will match the old paint.

S. Variations in grain, color and natural voids are normal in all types of wood products and are not covered by this Limited Warranty. Similarly, porcelain, tile, flooring, natural stone, grout and concrete are subject to natural color and manufacturing dye lot variations and natural stone is subject to naturally caused scratches, crazing and fissures and variations in shading, veining, chipping, joint sizing and thickness, and these variations are not covered by this Limited Warranty. Natural stone is unique and will look different from the sample from which your selection was made. In addition, granite and marble slabs may vary in size and seams may vary in location and number.

T. Condensation that accumulates between the panes of glass in dual-glazed windows indicates a broken seal. Window seals are warranted by the manufacturer only and are not covered under this Limited Warranty. Condensation on interior surfaces of the window and frame is the result of high humidity in the Unit and low outside temperatures and is not covered by this Warranty, nor is damage caused by tinting to windows.

U. Any claim barred by any limitation(s) period provided by law.

V. Special, incidental, or secondary damages of any kind, including, but not limited to, damages for bodily injury, emotional distress or loss of wages or income, arising from any item, whether or not such item is covered by this Limited Warranty or otherwise, (including, without limitation, lodging, meal or transportation expenses incurred by owner while an item exists or is being repaired, or secondary damage to wallpaper, drapes, or personal belongings).

W. Damage to or loss of personal property.

X. Stucco and Concrete Efflorescence. Efflorescence (white stain or discoloration) may be seen emanating or dripping from cracks and joints in the stucco finish and surfaces. Efflorescing is common in cement based products and occurs as moisture evacuates from the concrete carrying lime and salts, as part of the dehydration process. Efflorescence is a normal condition, and does not cause structural damage; therefore, the Seller is not responsible for efflorescence. Efflorescence may be cleaned with a trisodium phosphate (TSP) solution and water. TSP is available at most hardware or paint stores.

V. NO COVERAGE FOR MANUFACTURED ITEMS AND APPLIANCES. This Limited Warranty does not cover any appliance, piece of equipment, or other item which is a "Consumer Product" for purposes of the Magnuson-Moss Warranty Act, 15 United States Code Section 2301, et seq., or any successor statute thereto, or manufactured items covered by separate manufacturer warranties, and also

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does not cover damage or loss arising out of owner's failure to comply with manufacturer warranties. Seller does not assume any obligation to service or repair such consumer products or consumer goods, including all such consumers products or consumers goods installed or provided by Seller and all such consumers products or consumers goods installed or provided by any third party contracted by Buyer in connection with any optional upgrades or optional selections by Buyer. They are included on an "as is" basis, with Buyer assuming the entire cost of any and all necessary service, repair, or replacement in the event of defect in quality or performance. You agree to review the warranties for these items and note when the warranties start and end. In the event of malfunction of such items, you hereby agree to make a claim directly to the manufacturer or supplier. Seller hereby assigns to you any and all rights Seller may have under any original manufacturer warranties covering any Consumer Product in the Unit.

The following is a partial list of Consumer Products that are NOT covered by this Limited Warranty. Your Unit or the Common Area may not have all of the following items listed below.

Air Conditioning Unit	Audio System	
Bathroom Fixtures	Cooktops	
Dishwasher	Doorbell	Electric Meter
Exhaust Fans	Faucets	Finish Hardware
Fire Alarm and Fire Sprinkler Heads		
Flooring (carpet, hardwood, etc.)	Freezer	Furnace
Garage Door and Opener	Garbage Disposal	Gas Meter
Heat Pump	Ice Maker	Intercom
Kitchen Fixtures	Light Fixtures	
Landscape sprinklers and controls	Microwaves	Ovens
Oven Hood	Plumbing Fixtures	Range
Refrigerator	Security System	Smoke Detector
Speakers	Thermostat	
Washer/Dryer	Water Heater	
Water Meter	Water Pump	

VI. AFFIRMATIVE DEFENSES: The affirmative defenses set forth in Civil Code Section 945.5 are incorporated by reference herein, and said defenses shall be available to Seller with respect to any claim of a breach of warranty made under either or both of the Fit and Finish Warranty and the Functionality Standards warranties herein provided. Under no circumstances will Seller have any liability for any alleged defect where a claim was not delivered to Seller in writing prior to the expiration of the one (1) year Fit and Finish Warranty Period with respect to the Fit and Finish Warranty, or for any alleged defect under the Functionality Standards where a claim was not delivered prior to the expiration of the applicable warranty period for Functionality Standards described in Section III.A above ("**Functionality Warranty Periods**"). The "Fit and Finish Warranty Period" and the "Functionality Warranty Periods" are collectively referred to herein as the "**Warranty Periods**".

VII. TRANSFERABILITY/SUCCESSORS IN INTEREST; SUBSEQUENT PURCHASERS: This Limited Warranty and all its terms and conditions (including, without limitation, the Fit and Finish Warranty described in Section II and Functionality Standards described in Section III) is transferable upon resale of each Unit in the Project and is automatically transferred to any subsequent owners of each Unit in the Project, meaning that any person who acquires a Unit shall have the same rights and obligations the previous Unit owner under the terms of this Limited Warranty during the term of coverage. In accepting title to a Unit, subsequent owner's are deemed to have accepted the terms and conditions herein. The applicable terms of coverage under this Limited Warranty remain in effect and are not extended in any way for subsequent purchasers of the Unit. The Fit and Finish Warranty and the Functionality Standards warranty described in this Limited Warranty expire at the end of the applicable term of coverage regardless of transferability. Each Unit owner agrees to provide this Limited Warranty

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to any person who purchases the Unit from the owner before the end of the term of coverage.

VIII. WARRANTY CLAIMS; SERVICE REQUESTS; NOTICES TO SELLER.

A. Notices to Seller Concerning Deficiencies; Warranty Service Requests; Warranty Claims. All notices of deficiencies, and all warranty claims and requests for service under this Limited Warranty concerning the Fit and Finish Warranty or the Functionality Standards (together "**Requests**") shall be made pursuant to the procedures described in this Section VIII and must be made in writing and must be received by Seller within the applicable Warranty Period. No Request shall be valid under this Limited Warranty if not made within the applicable Warranty Period. In order for a Request to be valid under this Limited Warranty, Buyer or the Association must give Seller written notice of any deficiency in a Covered Component or Functionality Standard within thirty (30) days of discovery of such deficiency, specifying the nature of the deficiency. The thirty (30) day period for providing Seller with notice of a deficiency in a Covered Component or Functionality Standard shall commence upon the date the deficiency was first manifested as being reasonably obvious or evident to Buyer or the Association, as applicable. Failure of Buyer or the Association to notify Seller of such a deficiency within said thirty (30) day period shall void the warranty for that particular deficiency (only), provided, however, that if this provision is found to be unenforceable by an arbitrator, judicial referee or court having jurisdiction over the matter, then the failure to notify Seller within said thirty (30) day period shall constitute an affirmative defense of Seller as defined in Civil Code Section 945.5, and the failure of Buyer or the Association to notify Seller within said thirty (30) day period shall be deemed to be a failure to give timely notice to Seller after the discovery of a deficiency in a Covered Component or Functionality Standard.

Before making a Request under this Limited Warranty, please make sure to review any owner manual and/or any Association manual, and all applicable maintenance requirements for each item or deficiency for which you will be making a Request.

SELLER'S AGENT FOR NOTICE / WARRANTY CLAIMS / SERVICE REQUESTS:	
Name:	Pacific Pine LLC, a Delaware limited liability company Attn: Claims Manager
Mailing Address:	201 California Street, Suite 500 San Francisco, CA 94111

IX. DISPUTE RESOLUTION: Legal proceedings or actions by Buyer or the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Unit or Project against the Seller, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Seller for the design and/or construction of the Unit or Project, or any element thereof, or otherwise defined in Civil Code Sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code Sections 895 through 945.5, and Civil Code Section 6000, as such sections may be amended, revised or superseded, from time to time. If a Claim is subject to pre-litigation procedures in Civil Code Sections 910 through 938, or any successor statutes, then prior to proceeding with any civil action, arbitration or action in judicial reference regarding such Claim, the claimant shall comply with the pre-litigation procedures of Civil Code Sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code Section 6150 and/or Civil Code Sections 910 through 938, as applicable, and any successor statutes or laws.

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

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Association with respect to any damage to or defect in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

If the Claim is not resolved pursuant to the prelitigation procedures of Civil Code Sections 910 through 938, subject to the provisions of Civil Code Section 6000, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the following provisions.

NOTICE: BY EXECUTING THE DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION DO THEREBY ACKNOWLEDGE AND AGREE THAT ANY DISPUTE ARISING OUT OF OR RELATING TO THIS LIMITED WARRANTY, RELATING TO CONSTRUCTION DEFECTS, DESIGN, PLANNING, ENGINEERING, TESTING, SURVEYING, AND CONSTRUCTION OF IMPROVEMENTS TO THE PROPERTY, SHALL BE RESOLVED ACCORDING TO THE FOLLOWING DISPUTE RESOLUTION PROVISIONS.

A. FIT AND FINISH WARRANTY ITEMS: ANY CLAIM OR DISPUTE REGARDING THE COVERED COMPONENTS OF THE ONE YEAR FIT AND FINISH WARRANTY ITEMS SHALL BE RESOLVED AS FOLLOWS:

1. Prior to commencement of arbitration, the Dispute shall be submitted to mediation by the Judicial Arbitration Mediation Services ("JAMS"), or any successors to JAMS, or to any other entity offering mediation services that is acceptable to both the Seller and Buyer. The parties shall split the fees and costs of mediation evenly and each party shall bear its own attorneys and experts fees and costs. The mediation shall be held in the county in which the Project is located or in such other place as is mutually acceptable to the parties.

2. If such mediation does not resolve the Dispute within thirty (30) days of the matter being submitted to mediation, then the matter shall be resolved by arbitration as set forth in subsection IX.C below.

B. FUNCTIONALITY STANDARDS: ACTIONABLE DEFECTS; NON-ADVERSARIAL PROCEDURES. BY EXECUTING THE DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION DO THEREBY ACKNOWLEDGE AND AGREE THAT ANY CLAIM OR DISPUTE REGARDING ACTIONABLE DEFECTS AS DEFINED IN CIVIL CODE SECTION 896 MEANING ANY ACTION SEEKING RECOVERY OF DAMAGES ARISING OUT OF, OR RELATED TO DEFICIENCIES IN, THE RESIDENTIAL CONSTRUCTION, DESIGN, SPECIFICATIONS, SURVEYING, PLANNING, SUPERVISION, TESTING, OR OBSERVATION OF CONSTRUCTION, OF A BUILDER, AND TO THE EXTENT SET FORTH IN CHAPTER 4 (COMMENCING WITH SECTION 910), A SUBCONTRACTOR, MATERIAL SUPPLIER, INDIVIDUAL PRODUCT MANUFACTURER, OR DESIGN PROFESSIONAL, FOR ORIGINAL CONSTRUCTION INTENDED TO BE SOLD AS AN INDIVIDUAL DWELLING UNIT SHALL FIRST BE SUBJECT TO THE NON-ADVERSARIAL PROCEDURES SET FORTH IN CHAPTER 4, TITLE 7, CALIFORNIA CIVIL CODE, SECTIONS 910 THROUGH 938 INCLUSIVE. IF THE PARTIES TO SUCH CLAIM OR DISPUTE FAIL TO RESOLVE ANY SUCH CLAIM OR DISPUTE FOR ACTIONABLE DEFECTS BY THE NON-ADVERSARIAL PROCEDURES IN SAID CHAPTER 4, THEN SUCH CLAIM OR DISPUTE SHALL BE SUBMITTED TO ARBITRATION AS HEREINAFTER SET FORTH IN SUBPARAGRAPH C BELOW.

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C. **ARBITRATION OF DISPUTES; BINDING ARBITRATION. ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES, OR DISPUTES BY OR BETWEEN THE ASSOCIATION OR AN OWNER AND THE DECLARANT ARISING FROM OR RELATED TO THIS LIMITED WARRANTY, AND/OR THE UNIT AND/OR COMMON AREA, WHETHER BASED ON CONTRACT, TORT, OR STATUTE, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE RELATING TO AN ALLEGED CONSTRUCTION DEFECT AND THE DESIGN, PLANNING, ENGINEERING, TESTING, SURVEYING, MATERIALS, INSTALLATION AND CONSTRUCTION OF IMPROVEMENTS TO AN OWNER' CONDOMINIUM UNIT AND/OR THE COMMON AREA OR PROJECT, OR ARISING FROM OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS LIMITED WARRANTY, INCLUDING WITHOUT LIMITATION, ANY DEFENSE RELATING TO THE FORMATION OR VALIDITY OF THIS LIMITED WARRANTY, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT OR FRAUD IN THE EXECUTION OF THIS LIMITED WARRANTY (EACH, A "DISPUTE"), SHALL, SUBJECT TO THE PROVISIONS OF CIVIL CODE SECTIONS 895 THROUGH 938, AND CIVIL CODE SECTION 6000, BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS SECTION.**

1. The Dispute shall be submitted to arbitration by and pursuant to the Construction Arbitration Rules and Procedures or other applicable rules of JAMS in effect at the time of the Dispute. In the event that JAMS is for any reason unable or unwilling to serve as the arbitration service provider, then the parties shall agree on an alternative arbitration service. If the parties cannot agree, then an alternative arbitration service shall be determined by an order of a court of competent jurisdiction in the county in which the project is located. The parties hereby agree to be bound by the court's selection of the alternative arbitration service.

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

3. This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any dispute concerning the interpretation or the enforceability of this section, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this arbitration agreement, or the scope of arbitrable issues, and any defense relating to the enforcement of this Limited Warranty or any provision of this Limited Warranty, including without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this section and not by a court of law.

4. The administration fee charged by the arbitration service shall be borne initially one half by Buyer and one half by Seller; provided, however, that the administration fee and any other fees and costs of the arbitration ultimately shall be borne as determined by the arbitrator. Without limiting the foregoing, the Arbitrator's authority to allocate fees and costs shall expressly exclude each party's own attorneys' and experts' fees and costs, for which each party shall bear its own fees and costs.

5. The parties expressly agree and acknowledge that this Limited Warranty 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 Disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act. To the extent that any state or local law, ordinance, regulation, or judicial rule

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shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

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

7. The venue of the arbitration shall be in the county where the project is located, unless the parties agree in writing to another location.

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

9. Preliminary Procedures. If state or federal law requires an Owner, the Association or Seller to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Seller must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code Section 895 et seq., as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 6000, 6100 and 6150.

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

11. If any provision of this section 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.

12. Arbitration of any matter shall not be deemed a waiver of the attorney/client privilege or attorney/work product privilege in any manner.

NOTICE: BY EXECUTING THE DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY AND ALL DISPUTES AS DEFINED ABOVE IN THIS ARBITRATION PROVISION DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND CALIFORNIA LAW TO THE EXTENT CALIFORNIA LAW IS NOT INCONSISTENT THEREWITH, AND THE DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS THE DECLARANT, THE ASSOCIATION AND EACH OWNER

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MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, AND THE DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION SECTION. IF THE DECLARANT, THE ASSOCIATION AND/OR AN OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION OR ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, THEN SUCH PARTY MAY BE COMPELLED TO SUBMIT TO ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

IF SUBMISSION OF A DISPUTED MATTER REFERENCED IN THIS SUBSECTION IX.C TO ARBITRATION IS NOT PERMITTED UNDER THE THEN APPLICABLE LAW, BY ORDER OF A COURT OF FINAL DETERMINATION, THEN THE DECLARANT, THE ASSOCIATION AND EACH OWNER SHALL RESOLVE SUCH DISPUTE EXCLUSIVELY THROUGH JUDICIAL REFERENCE PURSUANT TO SUBSECTION IX.D BELOW.

D. JUDICIAL REFERENCE. PROVIDED THE ARBITRATION CLAUSE ABOVE IS FOUND TO BE UNENFORCEABLE, AND ONLY IN SUCH INSTANCE, ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES, OR DISPUTES BY OR BETWEEN THE ASSOCIATION OR AN OWNER AND THE DECLARANT ARISING FROM OR RELATED TO THIS LIMITED WARRANTY, AND/OR THE UNIT AND/OR COMMON AREA, WHETHER BASED ON CONTRACT, TORT, OR STATUTE, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE RELATING TO AN ALLEGED CONSTRUCTION DEFECT AND THE DESIGN, PLANNING, ENGINEERING, TESTING, SURVEYING, MATERIALS, INSTALLATION AND CONSTRUCTION OF IMPROVEMENTS TO AN OWNER'S CONDOMINIUM UNIT AND/OR THE COMMON AREA OR THE PROJECT, OR ARISING FROM OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS LIMITED WARRANTY, INCLUDING WITHOUT LIMITATION, ANY DEFENSE RELATING TO THE FORMATION OR VALIDITY OF THIS LIMITED WARRANTY, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT OR FRAUD IN THE EXECUTION OF THIS LIMITED WARRANTY (EACH, A "DISPUTE"), SHALL BE SUBMITTED TO BINDING JUDICIAL REFERENCE AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS SECTION .

1. The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638 through 645.2, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Seller shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.

2. The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by JAMS for judicial reference (or any other entity offering Judicial Reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

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

(b) The proceedings shall be heard in San Francisco County;

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

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS;

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

(f) 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;

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

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

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

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

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

3. Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code Sections 5925 to 5960 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code Sections 5925 to 5960, as same may be amended from time to time.

4. Judicial Reference of any matter shall not be deemed a waiver of the attorney/client privilege or attorney/work product privilege in any manner.

NOTICE: BY EXECUTING THE DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY AND ALL DISPUTES AS DEFINED ABOVE IN THIS JUDICIAL REFERENCE PROVISION DECIDED BY NEUTRAL BINDING JUDICIAL REFERENCE (IF, AND ONLY IF, THE ARBITRATION CLAUSE SET FORTH IN SECTION IX.C IS FOUND TO BE UNENFORCEABLE) UNDER PROCEDURES PROVIDED BY CALIFORNIA LAW, AND THE DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, AND THE DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS JUDICIAL REFERENCE SECTION. IF THE DECLARANT, THE ASSOCIATION AND/OR AN OWNER REFUSES TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, THEN SUCH PARTY MAY BE COMPELLED TO SUBMIT TO JUDICIAL REFERENCE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

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X. NO AUTHORITY TO ALTER; SEVERABILITY. No agent or representative of Seller has authority to alter, add to, or waive any of the terms, conditions, or provisions of this Limited Warranty, including without limitation the exclusions from coverage. If any term, condition, or provision of this Limited Warranty is declared illegal or invalid for any reason, the remaining terms, conditions and provisions of this Limited Warranty shall remain in full force and effect.

XI. DISCLAIMER OF WARRANTIES.

(a) EXCEPT AS PROVIDED IN THIS LIMITED WARRANTY, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF WORKMAN LIKE CONSTRUCTION, DESIGN, CONDITION, WITH RESPECT TO THE PROPERTY UNDERLYING THE PROJECT OR THE UNIT OR OTHER IMPROVEMENTS CONSTITUTING THE PROJECT, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES EXCEPT AS PROVIDED IN THIS LIMITED WARRANTY. BUYER WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION THAT BUYER OR THE ASSOCIATION MAY HAVE ARISING OUT OF THE CONSTRUCTION, DESIGN OR CONDITION OF THE UNIT OR COMMON AREA. BUYER'S AND THE ASSOCIATION'S SOLE REMEDY (IN LIEU OF ALL REMEDIES IMPLIED BY LAW OR OTHERWISE) AGAINST SELLER IN CONNECTION WITH ANY CONSTRUCTION DEFECT SHALL BE AS PROVIDED IN THIS LIMITED WARRANTY.

(b) SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES FOR ANY INSTALLATIONS, MATERIALS, PRODUCTS AND ANY RELATED CONSTRUCTION, SERVICE OR INSTALLATION WORK PERFORMED BY ANY THIRD PARTY CONTRACTED BY BUYER.

(c) SELLER SPECIFICALLY DISCLAIMS, AND BUYER AND THE ASSOCIATION SPECIFICALLY RELEASES SELLER FROM, ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES TO ANY PERSON IN THE UNIT, COMMON AREA OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A DEFECT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO BUYER.*

(d) BUYER AND THE ASSOCIATION SHALL BE DEEMED TO HEREBY ACKNOWLEDGE AND ACCEPT SUCH DISCLAIMERS AND AGREE TO WAIVE ANY AND ALL RIGHTS BUYER MAY HAVE BY VIRTUE OF THE REPRESENTATIONS AND WARRANTIES DISCLAIMED. EXCEPT AS OTHERWISE PROVIDED IN THIS LIMITED WARRANTY, BUYER AND THE ASSOCIATION ASSUMES THE RISK OF DAMAGE OCCURRING INSIDE OF THE UNIT OR COMMON AREA AFTER THE CLOSING REGARDLESS OF THE CAUSE.

(e) With respect to any appliances finally determined by a court to be within this limited warranty described herein, all implied warranties are limited in duration to the period of this written warranty. This includes, without limitation, the implied warranties of merchantability and fitness and habitability if created or recognized in California. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Buyer.*

(f) On all other appliances, whether or not warranted by manufacturers, all implied warranties are expressly disclaimed and do not apply, including, without limitation, the implied warranties of merchantability and fitness as created and recognized under California law.

(g) This limited warranty gives you specific legal rights, and you may also have other rights which vary from state to state.*

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(h) The provisions of this Section shall survive Closing.

*NOTE: This limited warranty has been prepared to comply with the disclosure requirements of the Federal Magnuson-Moss Warranty - Federal Trade Improvement Act (15 U.S.C.S. § 2301-2312, as amended). The sentences indicated by asterisks are required by regulations promulgated by the Federal Trade Commission (16 CFR § 700. 1-703.8).

XII. WAIVER OF IMPLIED WARRANTIES.

SELLER IS PROVIDING THIS LIMITED WARRANTY TO YOU BASED ON AND AS CONSIDERATION FOR YOUR AGREEMENT TO THE PROVISIONS AND LIMITATIONS OF THIS LIMITED WARRANTY, INCLUDING AND IN CONSIDERATION OF YOU ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, WITHOUT LIMITATION, THE FOLLOWING WAIVERS: EACH OWNER AND THE ASSOCIATION HEREBY WAIVES ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WORKMANLIKE CONSTRUCTION.

XIII. ASSIGNMENT. Seller reserves the right to assign its rights and obligations under this Limited Warranty to an affiliated entity.

XIV. ENTIRE AGREEMENT. This Limited Warranty represents the entire agreement and understanding between Seller, each owner and the Association regarding their duties and obligations under this Limited Warranty. You acknowledge that you have not relied on and will not rely on any representation made by any agent of Seller, or any affiliate of Seller regarding the condition or use of any Unit or Common Area, or regarding the rights or duties of the parties under this Limited Warranty, unless the representation is in writing and signed by Seller's authorized agent. The provisions of this Limited Warranty shall survive Close of Escrow on the Unit.

XV. EFFECTIVE DATE. This Limited Warranty shall be effective as of the Commencement Date, as defined herein.

XVI. INVALIDITY OF ANY PROVISION: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect. NO PERSON ACTING FOR SELLER IS AUTHORIZED TO MAKE, AND BUYER AND THE ASSOCIATION HEREBY WAIVE, EXCEPT AS PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED (EXCEPT FOR THOSE ARISING OUT OF APPLICABLE STATUTES), OR IN ANY WAY RELATING TO THE CONSTRUCTION OF THE PROJECT OR ANY IMPROVEMENTS BY SELLER OR AT SELLER'S REQUEST, AND/OR THE SALE OF THE PROPERTY BY SELLER TO BUYER.

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ACKNOWLEDGMENT

BY EXECUTING THE DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, EACH OWNER, AND THE ASSOCIATION ACKNOWLEDGE THAT THEY HAVE READ THIS LIMITED WARRANTY, THEY UNDERSTAND ITS TERMS AND AGREE TO BE BOUND THEREBY.

[NOT FOR SIGNATURE – EXHIBIT TO DECLARATION]

BUYER(S)

Printed Name(s)_____

Signature(s)_____ Date_____

Printed Name(s)_____

Signature(s)_____ Date_____

Printed Name(s)_____

Signature(s)_____ Date_____

SELLER

Pacific Pine LLC, Date _____
a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Agent

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Exhibit A
To
LIMITED WARRANTY FOR THE AUSTIN

Part 2 of Division 2 of the California Civil Code

TITLE 7 - REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS

CHAPTER 1 - DEFINITIONS

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

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

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

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

(e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in Civil Code Section 4080, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.

(f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in Civil Code Section 4080.

CHAPTER 2 - ACTIONABLE DEFECTS

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

(a) With respect to water issues:

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

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

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"systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Showers, baths, and related waterproofing systems shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) The waterproofing system behind or under ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage. Ceramic tile systems shall be designed and installed so as to deflect intended water to the waterproofing system.

(b) With respect to structural issues:

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

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

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

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

(c) With respect to soil issues:

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

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

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

(d) With respect to fire protection issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 3 - OBLIGATIONS

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

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

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

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

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

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

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notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

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

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

CHAPTER 4 - PRELITIGATION PROCEDURE

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

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

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

911. (a) For purposes of this title, except as provided in subdivision (b), "builder" means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.

(b) For the purposes of this title, "builder" does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.

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912. A builder shall do all of the following:

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

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

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

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

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf.

A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

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

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

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

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

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

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

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

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

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

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder.

At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

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

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

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the

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timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

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

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

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

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

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

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 6000 of the Civil Code, but an action is subsequently commenced under Section 6000 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 6000 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract,

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or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.

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

938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

CHAPTER 5 - PROCEDURE

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

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

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

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

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

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

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

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

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

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Sections 5980 and 5985 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5. A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

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

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

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

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

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

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

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

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

ACKNOWLEDGEMENT

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND READ TITLE 7 OF DIVISION 2, PART 2, OF THE CALIFORNIA CIVIL CODE (SECTION 895 ET SEQ.), ABOVE, AND YOU ACKNOWLEDGE THAT SELLER HAS ADVISED YOU THAT SAID STATUTE AFFECTS YOUR LEGAL RIGHTS.

BUYER:

_____ _____
Date

Name: [_____]

_____ _____
Date

Name: [_____]

SALES REPRESENTATIVE:

_____ _____
Date

Name: [_____]

Unit Number [_____]

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EXHIBIT D

MINIMUM MAINTENANCE RESPONSIBILITIES

[THE FOLLOWING STANDARDS APPLY IN ADDITION TO THE GENERAL MAINTENANCE OBLIGATIONS AND STANDARDS AND ANY OTHER SPECIFIC OBLIGATIONS AND STANDARDS DESCRIBED IN SECTIONS 5.1 AND 5.2 OF THIS DECLARATION]

ITEM	OWNER/ASSOCIATION RESPONSIBILITY
	UNIT OR BUILDING EXTERIOR
Unit Entry Door	Owner: Owner shall (i) clean, maintain and paint interior surface of door, and (ii) clean, maintain, repair and replace (except if the Association is replacing the door, in which case the Association shall replace such equipment) all hardware, hinges, glass, the handle and lock mechanism, door closers, drop seals, door sweeps and other mechanical equipment on the exterior boundaries of a Unit. Association: Association shall (i) repair and replace exterior surface of door, and (ii) clean, maintain, repair, replace, paint, stain or waterproof exterior surface of door.
Exclusive Use Common Areas – Balcony and Terrace Areas	Owner: Owner shall (i) maintain and repair any built-up or raised decking, tile, brick or paver covering such terrace or balcony, and any waterproofing treatment to the surface of such built-up or raised decking, tile, brick or paver, (ii) sweep and clean floor surface of balcony and terrace, and keep free of debris and trash, (iii) maintain any Owner landscaping, (iv) replace light bulbs for any lighting on terrace and balcony areas, (v) routine cleaning of exterior light fixtures, (vi) clean and keep any drains and gutters located on terrace and balcony areas clear and free of obstruction, (vii) replace any drainage covers, and (viii) clean any railings surrounding balcony and terrace. Owner shall not be obligated to maintain and repair the planters or landscaping that part of the stormwater management system for the Development, which maintenance and repair shall be the responsibility of the Association. Association: Association shall maintain and repair the structural components of the Common Area associated with the Exclusive Use Common Area terraces and balconies, including, without limitation, the floor sealing and any associated waterproofing, sealant or elastomeric

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	membranes below the surface of the flooring. Association shall maintain, repair, replace and paint any railings surrounding the Exclusive Use Common Areas. Association shall maintain, repair and replace exterior lighting fixtures within the Exclusive Use Common Areas (except for replacing light bulbs and routine cleaning, which shall be the responsibility of Owner as described above). Association shall maintain, repair and replace any planters, related improvements and landscaping that are part of the stormwater management system for the Development. Association shall maintain, repair and replace any davit storage boxes located on the Exclusive Use Common Area terraces and balconies
Exclusive Use Common Areas - Exterior Balcony and Terrace Doors	Owner: Owner shall maintain all portions of the balcony and terrace door and door hardware, door adjustments, including weather proofing, sheathing, frame, lock mechanism, screens. Owner must keep patio door tracks clean and free of debris as the door tracks drain to the outside. Association: Association shall be responsible for painting, staining or waterproofing exterior surface of exterior of door.
Mailbox	Owner shall be responsible for replacement of key and lock, in the event of lost key or costs associated with replacement of key and lock, as billed back by Association.
Windows, including metal frames, tracks and exterior screens of glass doors and windows Special Note: The operable windows are sophisticated, engineered mechanisms that must be maintained in accordance with the manufacturer's guidelines. This includes the opening mechanism that may be difficult to operate due to the nature of penetrating a high performance high-rise curtain wall.	Owner: Owner shall (i) maintain all glass, any screens and lock mechanism, (ii) operable window mechanisms, and (iii) replace broken glass. Owner shall be responsible for washing of the interior of all windows in the Owner's Unit. Owner shall be responsible for washing of the exterior of all windows of the Owner's Unit should they be reached directly from Owner's balcony or Terrace, or ground floor commercial Unit. Owner shall pay for the cost of repair and/or replace all windows serving that Owner's Unit, provided that the Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion.

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	Association: Association shall (i) maintain frame, weather stripping and caulking, and (ii) maintain, repair and/or replace all windows in the common portions of Buildings. The Association shall hire a professional to perform such repairs, and shall oversee such repairs so that quality and workmanship is of a first-class standard. Particular attention shall be paid to sealing of windows and prevention of leakage and water intrusion.
a) **UNIT INTERIOR**	
Unit Interior	Owner: Owner shall maintain all interior doors, door frames, door locks, door thresholds, door hardware, interior wall surfaces (including paint and/or wall coverings), window coverings, drywall, cabinets, countertops, backsplashes, bathroom and kitchen fixtures, floor coverings, ceilings, permanent fixtures, trade fixtures, appliances, mirrors, any HVAC unit exclusively servicing the Owner's unit (including the components that are located outside the Unit, if any), toilets, smoke detectors, washing machine water hoses, washer and dryer pan drains and connections, plumbing fixtures, and all other items within the Unit whether free-standing or built in. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units may be pierced or otherwise altered or repaired without approval from the Architectural Control Committee. Association: Association shall maintain and repair the building fire alarm system and fire sprinkler heads within the Unit.
Water, Gas and Sewer Pipes, Water Pressure Regulator, Water Heater, Plumbing Outlets and Fixtures, Ducts (Heating, Dryer, Stove, Oven), Electrical, Circuit Breakers, Electrical Outlets and Fixtures, HVAC units	Owner shall maintain portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit (i.e., from the interior surface of the Unit's walls to the appliances, and kitchen and bathroom facilities within the Unit). An Owner may plunge blocked kitchen and bathroom facilities in his Unit, but may not use a snake, or cause a snake to be used, in any pipes unless instructed to do so by the Association. Owner shall maintain and repair the electrical system exclusively serving the Owner's Unit, including, but not limited to, light fixture, light switches, light bulbs, bathroom fan fixtures, and wiring. Owner shall maintain the heating system and air-conditioning units, including, but not limited to baseboard heaters, wall-mounted heaters, air-conditioning and heater fans and components. Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any maintenance of electrical wiring, or water, gas and sewer pipes or lines located within the Unit.

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	Only ventless electric clothes dryers may be used in the Units. Vented clothes dryer appliances shall not be operated in any Unit. There are no hook-ups, conduits or facilities for vented clothes dryers in any Unit.
Clothes Washer Hoses	Each Owner shall have the water hose(s) for any clothes washer inspected annually, and shall provide proof of such inspection to the Association
b) **UTILITIES**	
Telephone Wiring and Equipment	Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Association Property, and is responsible for obtaining and having services, unless otherwise provided in the Condominium Documents.
Gas and Electric	Owner shall maintain, repair and replace the utility facilities and equipment which exclusively service the Unit and are located in the Unit or in the Association Property, and is responsible for obtaining and having serviced, unless otherwise provided in the Condominium Documents.

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